

# **EXHIBIT II**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

IN RE: \* PROMESA TITLE III  
\*  
THE FINANCIAL OVERSIGHT AND \* CASE NO. 3:17-bk-03283 (LTS)  
MANAGEMENT BOARD FOR PUERTO RICO \*  
\*  
As representatives of \*  
\*  
THE COMMONWEALTH OF PUERTO RICO \*  
RICO; Et Al. \*  
\*  
Debtor \*  
\*\*\*\*\*  
IN RE: \* PROMESA TITLE III  
\*  
THE FINANCIAL OVERSIGHT AND \* CASE NO. 3:17-cv-01685 (LTS)  
MANAGEMENT BOARD FOR PUERTO RICO \*  
\*  
As representative of \* CASE NO. 3:17-bk-03566 (LTS)  
\*  
THE EMPLOYEES RETIREMENT SYSTEM \*  
OF THE GOVERNMENT OF THE COMMON- \*  
WEALTH OF PUERTO RICO \*  
\*  
Debtor \*  
\*\*\*\*\*

DEPOSITION OF MR. FRANCISCO JOSÉ PEÑA MONTAÑEZ

DATE : May 30, 2019  
TIME : 9:03 a.m.  
CLIENT : JONES DAY  
ADDRESS : Brickell World Plaza  
600 Brickell Avenue, Suite 3300  
Miami, Florida  
HELD AT : Delgado & Fernández  
Professional Offices Complex  
1001 San Roberto Street, Second Floor  
San Juan, Puerto Rico

1 proceedings.)

2 MR. HERNÁNDEZ:

3 Thank you. Now the court reporter, can you please  
4 raise your right hand and state your full name for the  
5 record?

6 COURT REPORTER:

7 Lissette Guardiola Merced for Crespo & Rodríguez,  
8 Inc.

9 (Whereupon,

10 MS. LISSETTE GUARDIOLA MERCED,  
11 was duly sworn as the official court reporter for these  
12 proceedings.)

13 MR. HERNÁNDEZ:

14 May I please be excused?

15 MR. PAPEZ:

16 Yes, thank you.

17 (Notary exits the proceedings.)

18 MR. PAPEZ:

19 Good morning, Mr. Peña, could you please state your  
20 name for the record again?

21 THE DEPONENT:

22 Francisco José Peña Montañez.

23 MR. PAPEZ:

24 I'm going to be asking you questions today in  
25 English. Do you speak English?

1 for topics two thru five?

2 A I believe so.

3 Q What is your current position at the  
4 Commonwealth?

5 A I am undersecretary of the Treasury.

6 Q Do you report directly to the secretary of the  
7 Treasury?

8 A Yes.

9 Q How long have you held the position of  
10 undersecretary of the Treasury?

11 A Since March 2019, approximately two-to-three  
12 months.

13 Q What position did you have before  
14 undersecretary of Treasury?

15 A Deputy secretary of the Treasury in the  
16 Treasury Department.

17 Q And how long did you have that position?

18 A As of January 2017.

19 Q So from January 2017 thru March 2019, you were  
20 the deputy secretary of Treasury?

21 A That is correct.

22 MR. MAYOL:

23 If I may...? I think there's some confusion on the  
24 titles, I've been, I've been a secretary, and in the  
25 number two position under secretaries or associate

1       secretaries, or assistant secretaries, are the ones  
2       under the different departments, so I think we should  
3       clarify exactly what positions those were.

4       INTERPRETER:

5            Do you have a suggestion on how we should--

6       MR. PAPEZ:

7            I'll do it.

8       INTERPRETER:

9            All right.

10      MR. PAPEZ:

11           Q      I understand your position today is under  
12       secretary of the Treasury, is that correct?

13           A      That is correct.

14           Q      Do you oversee a particular department within  
15       the Treasury Department?

16           A      As under secretary, I supervise generally  
17       speaking all of the divisions in the Treasury  
18       Department, with the exception of Internal Revenue, the  
19       Internal Revenue area.

20           Q      How does that job description differ from when  
21       you were the assistant secretary of the Treasury?

22      MR. SUSHON:

23           Object to the form.

24      THE DEPONENT:

25           Okay, the secretariat of the Treasury is a

1 division, or a department, within the Department of the  
2 Treasury.

3 MR. PAPEZ:

4 Q What were your job, your primary job  
5 responsibilities as the assistant secretary of the  
6 Treasury?

7 A The primary function was to administrate the  
8 cash flow, and that the liquid status of the accounts,  
9 under the custody of the secretary.

10 Q Did you report directly to the secretary of  
11 the Treasury as assistant secretary of the Treasury?

12 A Yes.

13 Q Just give me, briefly, a description of your,  
14 well, I'll start with your education in college.

15 A I have a bachelor's degree in business  
16 administration, with a major in accounting and finances.  
17 And I passed a CPA exam in 1995.

18 Q Any other formal education?

19 A No.

20 Q And where did you obtain your college degree?

21 A University of Puerto Rico.

22 Q And when did you graduate?

23 A Graduation was in February 1995.

24 Q All right. Give me, briefly, just a  
25 description of your jobs between, when you graduated

1       of 2017, when you began as assistant secretary of  
2       Treasury, I understand that was the time when the  
3       administration of the Commonwealth changed. Correct?

4           A     Yes, the change in the administration was in  
5       January of 2017.

6           Q     Approximately how many people, within your  
7       department, when you were assistant secretary of  
8       Treasury, reported to you in January of 2017?

9           A     About 45 people, 45 employees.

10          Q     How many of those 45 employees were also  
11       employees in the same positions, in the prior  
12       administration, in December 2016, for example?

13        MR. SUSHON:

14           Objection to the form. Also, beyond the scope.

15        THE DEPONENT:

16           Using, as a baseline, the first day I arrived at  
17       the office, my understanding is that all of them were  
18       there at the time of the change in the administration.

19        MR. PAPEZ:

20          Q     Who held the position of assistant secretary  
21       of Treasury before you held it?

22        MR. SUSHON:

23           Objection, beyond the scope.

24        THE DEPONENT:

25           I do not know the person's name.

1       that. Let me ask you: Before June of 2017, you  
2       understand that ERS was a pension system, correct?

3           A       My best understanding is that ERS was a  
4       trusteeship that administrated the Puerto Rico Pension  
5       System.

6           Q       Before June of 2017, what was your  
7       understanding of how ERS collected funds to pay  
8       pensions?

9           A       I cannot describe all of ERS's activities in  
10      terms of its revenue sources, there were taxes that the  
11      employers had to contribute to the trusteeship.

12     MS. GORDON:

13           Sorry for the interruption, but taxes should be  
14      more than contributions.

15     INTERPRETER:

16           There were contributions that the employees had to  
17      submit to the trusteeship.

18     DEPONENT:

19           I need a translation for that.

20     THE INTERPRETER:

21           He would like to know what it was that you had just  
22      commented.

23     THE DEPONENT:

24           Okay?

25

1 INTERPRETER:

2 "La diferencia fue el uso de la palabra  
3 contribuciones que yo lo traduje como 'taxes' versus el  
4 uso de la palabra "contributions", que es una traducción  
5 literal de contribuciones."

6 DEPONENT:

7 Okay, okay.

8 INTERPRETER:

9 Okay, it would be a literal translation, then  
10 "contributions."

11 MR. PAPEZ:

12 Q Okay. So let me just make sure I understand.

13 A Mmhm.

14 Q Part of the revenues, that went into ERS,  
15 included contributions from employers, correct?

16 A That is correct.

17 Q And, historically, before June 2017, ERS would  
18 invest the employer contributions in order to build up  
19 investment assets. Is that correct?

20 MR. SUSHON:

21 Objection. I'm sorry, you finish. Object to the  
22 form.

23 DEPONENT:

24 I cannot explain what activities the ERS undertook  
25 with its assets. But my understanding was that it was

1       the resources, the financial resources of the ERS  
2       should've been used for the payment of pensions.

3       MR. PAPEZ:

4           Q       Do you understand that, If I use the term  
5       "pay-as-you-go" model, do you understand what that, do  
6       you have an understanding of what that term means?

7           A       I wouldn't know how to answer your question,  
8       because what I could possibly understand of the concept,  
9       it may not be the same thing. So, I wouldn't know how  
10      to answer that.

11          Q       That's fine. What do you understand by the  
12       term "pay-as-you-go" with regard to pensions?

13          A       My understanding is that once the need to pay  
14       the pensions is there, the resources will be identified  
15       in order to pay the total amount of those payments. Or  
16       in order to cover the total amount of those payments.

17       INTERPRETER:

18           He said, "in order to cover the total of those  
19       payments."

20       MR. PAPEZ:

21          Q       All right. Are you familiar with another type  
22       of asset system where, strike that. Are you familiar  
23       with another type of pension system where assets are  
24       built up, and then investment, and then pensions are  
25       paid out, through income that's generated from the

1 investment.

2 MR. SUSHON:

3 Objection to the form.

4 INTERPRETER:

5 "...pensions are paid out through..."

6 MR. PAPEZ:

7 Q Income generated by the investment.

8 A No.

9 Q Okay. What was your understanding of how ERS  
10 paid pensions in January of 2017?

11 MR. SUSHON:

12 Objection, beyond the scope.

13 DEPONENT:

14 I do not know how the ERS resources were used to  
15 pay pensions. The current disbursement of pension  
16 payments is done through the Department of the Treasury.

17 MR. PAPEZ:

18 Q Who actually paid the pension in January of  
19 2017?

20 MR. SUSHON:

21 Objection, beyond the scope.

22 DEPONENT:

23 The Government disbursements to pensions to retired  
24 personnel was through the Department of the Treasury.

25

1 MR. PAPEZ:

2 Q And that was true between January 2017 and  
3 June 2017, as well?

4 MR. SUSHON:

5 Objection, beyond the scope.

6 DEPONENT:

7 My understanding is that it was.

8 MR. PAPEZ:

9 Q In that time period, January 2017 thru June  
10 2016 (sic), were actual checks sent out from the  
11 Department of the Treasury to pensioners?

12 MR. SUSHON:

13 Object to the form. I think you meant June 2017.  
14 And it's also beyond the scope.

15 MR. PAPEZ:

16 Let me start over.

17 Q Between January 2017 and June 2017, when the  
18 Government disbursed pension payments to retirees, in  
19 the Department of the Treasury, were retirees sent an  
20 actual check?

21 MR. SUSHON:

22 Objection, beyond the scope.

23 DEPONENT:

24 I understand that was a method of payment.

25

1 MR. PAPEZ:

2 Q All right. Who was the payor on the check?

3 MR. SUSHON:

4 Objection, beyond the scope.

5 DEPONENT:

6 To the best of my understanding, it was the  
7 Department of the Treasury.

8 MR. PAPEZ:

9 Q Were any pensions paid by wire transfer in the  
10 January 2017 thru June 2017 time period?

11 MR. SUSHON:

12 Objection, beyond the scope.

13 DEPONENT:

14 I cannot specify exactly if there were payments  
15 made through direct deposit, but it is a method of  
16 payment.

17 MR. MAYOL:

18 Can I clarify? I'm the former administrator, so  
19 during my tenure in 2009. All transfers are wire  
20 transfers; there are no checks issued.

21 MR. PAPEZ:

22 I'm not sure how that's relevant, it's not true  
23 that you're sworn to testify, but okay. That's fine.

24 Q And I'm going to be focusing now on January  
25 2017 thru June 2017. When the Department of Treasury

1       sent payments to pensioners, would the Department of  
2       Treasury then seek reimbursement from ERS?

3       MR. SUSHON:

4               Objection to form, and beyond the scope.

5       DEPONENT:

6               The Department of the Treasury did receive funds as  
7       reimbursements for those payments.

8       MR. PAPEZ:

9               Q       And did those reimbursements come from ERS?

10       MR. SUSHON:

11               Objection, beyond the scope.

12       DEPONENT:

13               Yes.

14       MR. PAPEZ:

15               Q       In that same time period, was ERS able to pay  
16       the entire amount of reimbursement requested by the  
17       Department of Treasury?

18       MR. SUSHON:

19               Objection, beyond the scope.

20       DEPONENT:

21               I cannot specify if it was the total amount of  
22       reimbursement, but it did receive funds from ERS.

23       MR. PAPEZ:

24               Q       My understanding of how the pension system  
25       worked, in that time period, was that the employers,

1       whose employees were covered by the system, would make  
2       contributions to ERS. Is that correct?

3       MR. SUSHON:

4               Objection, beyond the scope.

5       DEPONENT:

6               To the best of my understanding, yes.

7       MR. PAPEZ:

8               Q       In Exhibit 4, if you can turn to page 228...  
9       And the third full paragraph begins, "The Commonwealth  
10      Central Government..." do you see that?

11       A       Yes.

12       Q       Okay. It says, "The Commonwealth Central  
13      Government is responsible for approximately 59.5 percent  
14      of total employer contributions to ERS, and the other  
15      40.5 is the responsibility of Public Corporations in  
16      municipalities." Do you see that?

17       A       Yes.

18       Q       Do you have any reason to disagree with those  
19      estimates?

20       MR. SUSHON:

21               Objection, beyond the scope.

22       DEPONENT:

23               I do not have the information in order to respond  
24      regarding the estimates.

25

1 MR. PAPEZ:

2 Well, it is covered by Topic 3, if he cannot answer  
3 the question, and I am right that it is within the Topic  
4 3, then the Commonwealth will not have an answer on  
5 that. That's how a 30(b)(6) works.

6 MR. SUSHON:

7 I know how 30(b)(6) works. Thank you

8 MR. PAPEZ:

9 All right.

10 Q So, let me just start: Does the Commonwealth  
11 agree that, even before June 2017, it was ultimately  
12 responsible for any funding deficiency with respect to  
13 Central Government employees in ERS?

14 MR. SUSHON:

15 Object to the form, beyond the scope.

16 DEPONENT:

17 I cannot respond to that question right now, in the  
18 name of the Central Government, because that would  
19 require a legal analysis.

20 MR. PAPEZ:

21 Q And so you're unprepared to testify about  
22 that, to answer that question on that subject today,  
23 correct?

24 A I am prepared to answer, generally speaking,  
25 on the topics that were shown to me; not to do a legal

1       could just read that to yourself, and if you need a  
2       translation, please let the translator know.

3       MR. SUSHON:

4               The entire paragraph now?

5       MR. PAPEZ:

6               Q       Yes, please.

7               (Deponent reviews paragraph accordingly.)

8       INTERPRETER:

9               "Imminent domain."

10      MR. SAGARDÍA:

11               "Expropiación."

12      INTERPRETER:

13               "Expropiación."

14               (Interpreter translates paragraph.)

15      MR. PAPEZ:

16               Q       Okay, first off, there is a part in this  
17       paragraph that talks about "Employer contributions by  
18       the Commonwealth to the Retirement Systems." Before  
19       June of 2017, would the Commonwealth actually transfer  
20       money to the Retirement Systems' ERS?

21      MR. SUSHON:

22               Beyond the scope.

23      DEPONENT:

24               In order to answer your question, I am going to  
25       separate the Commonwealth from the agencies of the

1 Commonwealth. On behalf of the agencies of the Central  
2 Government, the Department of the Treasury did not make  
3 transfers to the ERS. My understanding is that the  
4 municipalities and the Public Corporations did do  
5 transfers to the ERS.

6 MR. PAPEZ:

7 Q The Central Government was responsible for  
8 some employer contributions to ERS, before June of 2017.  
9 Correct?

10 MR. SUSHON:

11 Objection, beyond the scope.

12 DEPONENT:

13 From the point of view of the employer  
14 contribution, yes.

15 MR. PAPEZ:

16 Q But my understanding, from your testimony just  
17 a few minutes ago, is that no money was actually  
18 transferred from the Central Government Treasury to ERS  
19 on account of those employer contributions. Do I have  
20 that correct?

21 MR. SUSHON:

22 Objection to form, beyond the scope, and mis-  
23 characterizes his testimony.

24 DEPONENT:

25 Regarding the agencies of the Central Government,

1 there were no transfers to the ERS because the  
2 Department of the Treasury pays retirees directly.

3 MR. PAPEZ:

4 Q Were there accounting entries made within the  
5 Department of Treasury to account for employer  
6 contributions it would make to ERS, but for its payment  
7 of Retirement Benefits to pensioners? Do you understand  
8 my question?

9 MR. SUSHON:

10 I don't understand your question.

11 INTERPRETER:

12 I didn't either.

13 (Laughter by all.)

14 MR. PAPEZ:

15 Let me start over.

16 Q How did the Central Government account for  
17 employer contributions, it was required to make to  
18 ERS...

19 INTERPRETER:

20 Okay, let me start with that.

21 MR. PAPEZ:

22 Q ...has offset by actual monies that the  
23 Treasury Department paid to retirees?

24 MR. SUSHON:

25 Objection, and beyond the scope.

1 DEPONENT:

2           In order to explain the accounting issues, I am not  
3           going to go into the conceptual framework, I am going to  
4           go into the conceptual framework, in which a debt to the  
5           ERS is created, a debt by the Central Government is  
6           created to the ERS.

7           And, simultaneously, an account receivable account  
8           is generated in the Treasury again to the ERS.

9           They compensate each other, they offset each other,  
10           that's why, at one point, I answered that the ERS  
11           transfers money to the Treasury Department as that  
12           offset.

13 MR. PAPEZ:

14           Q     All right. Turning back to page 230, in that  
15           paragraph that I read, that I asked you to read, there's  
16           a sentence that says, "The Commonwealth, however, has  
17           continued to partially make its employer contribution to  
18           ERS subject to the offset of the amount of debt service  
19           payable on the Pension Bonds, discussed above..."

20 MS. DALE:

21           I'm sorry, can you just tell us where we're now.

22 MR. SUSHON:

23           Two thirty.

24 MR. PAPEZ:

25           Two thirty, yeah.

1 MR. SUSHON:

2 Two thirty in that paragraph.

3 MS. DALE:

4 Got it.

5 MR. PAPEZ:

6 Q My question is, do you have an understanding  
7 of what that sentence means?

8 MR. SUSHON:

9 Objection, beyond the scope.

10 DEPONENT:

11 Okay. I have not read the full document, but I can  
12 interpret it in part, regarding the partial payments on  
13 employee contributions. The second part of the  
14 sentence, I do not understand.

15 MR. PAPEZ:

16 Q Okay. Well, let's start with the part that  
17 you understand about "partially making its employer  
18 contributions to ERS." What do you understand that to  
19 mean?

20 MR. SUSHON:

21 Objection, beyond the scope.

22 DEPONENT:

23 I have never read the entire document, so I don't  
24 understand the reference to "Commonwealth." In order to  
25 understand it, I establish "Central Government, Public

1       Corporations, and Municipalities."

2                   And due to information that has become public,  
3                   there are debts that need to be collected from certain  
4                   employers.

5 MR. PAPEZ:

6 Q Between January 2017 and June 2017, did the  
7 Commonwealth make the full amount of its required  
8 employer contribution to ERS?

9 MR. SUSHON:

10 Objection, beyond the scope.

11 DEPONENT:

12                   In terms of the Commonwealth, certain employers  
13                   made their payments, but I cannot attest to all of the  
14                   employers having made their contributions.

15 MR. PAPEZ:

16 Q I'm talking now about the Commonwealth Central  
17 Government. Did the Commonwealth Central Government  
18 make the full amount of its required contribution to the  
19 ERS between January 2017 and June 2017?

20 MR. SUSHON:

21 Objection, beyond the scope.

22 DEPONENT:

23                   In order to answer that question, I would need to  
24                   review all of the accounting entries, that was generated  
25                   between the ERS and the Central Government, and I did

1 Q And what do you understand that term to be?

2 A I am not sure of what AUC means.

3 Q Have you come to an understanding that ERS  
4 historically, before June 2017, was underfunded in terms  
5 of the amount of money coming in order to pay pensions  
6 going out.

7 A According to my reading of the documents, I  
8 understand that the system had a debt, and that it was  
9 underfunded.

10 Q And over the years, efforts were made within  
11 the Commonwealth of Puerto Rico to try to re-form the  
12 system, in order to...

13 INTERPRETER:

14 "Balance...?"

15 MR. PAPEZ:

16 --balance the... thank you!

17 (Laughter.)

18 MR. PAPEZ:

19 Do you want this seat?

20 INTERPRETER:

21 Not really.

22 MR. PAPEZ:

23 No, that's okay. That's fine.

24 MR. SUSHON:

25 Objection, beyond the scope.

1 DEPONENT:

2 I have heard of several intents of re-form.

3 MR. PAPEZ:

4 Q One of the efforts to re-form was to increase  
5 the amount of money going into ERS from the  
6 Municipalities, Public Corporations, and the Central  
7 Government. Correct?

8 MR. SUSHON:

9 Objection, beyond the scope.

10 MS. DALE:

11 Objection to form.

12 THE DEPONENT:

13 In order to answer that question, I would need to  
14 review the laws that gave rise to that. Yes, but I have  
15 heard.

16 MR. PAPEZ:

17 Q Okay. Have you heard, also, that one of the  
18 ways that actuarially enacted to increase the funding to  
19 ERS was to require AUC, or Additional Uniform  
20 Contributions by the Municipalities, Public  
21 Corporations, and the Commonwealth Central Government?

22 MR. SUSHON:

23 Objection to form and beyond the scope.

24 DEPONENT:

25 Okay, in terms of having heard, yes, I have heard

1       that I could, I have not confirmed it by reading the  
2       law.

3       MR. PAPEZ:

4           Q       Based on your understanding and I'm not asking  
5       you to give me a legal interpretation, based on your  
6       understanding, were AUCs, additional contributions, in  
7       order to fund ERS?

8       INTERPRETER:

9                " Were they used..."

10      MR. PAPEZ:

11                Let me try again.

12      INTERPRETER:

13                I missed a verb somewhere in there.

14      MR. PAPEZ:

15                That's okay.

16            Q       Based on your understanding, were AUCs also  
17       meant to be contributions to ERS, in order to have funds  
18       to ERS?

19      MR. SUSHON:

20                Objection to form and beyond the scope.

21      DEPONENT:

22                Based on my understanding, I would not know how to  
23       answer that question, because I have not read the law.

24      MR. PAPEZ:

25                Does anyone want a break?

1                   understood that ERS was severely underfunded. Correct?

2                   MR. SUSHON:

3                   Objection to the form.

4                   DEPONENT:

5                   I understand that there were deficiencies; it is  
6                   not up to me to characterize them as "severe."

7                   MR. PAPEZ:

8                   Q        Do you understand that in order to make up for  
9                   the funding deficiencies ERS was selling its assets?

10                  MR. SUSHON:

11                  Objection to the form. As of what time?

12                  MR. PAPEZ:

13                  Before June 2017.

14                  MR. SUSHON:

15                  To the extent that that goes back beyond January  
16                  1<sup>st</sup>, 2017, I object that it's beyond the scope.

17                  DEPONENT:

18                  I do not know what activities the ERS undertook in  
19                  order to cover its deficiencies. I understand that it  
20                  is a mechanism to do so.

21                  MR. PAPEZ:

22                  Q        By January of 2017, did the Commonwealth  
23                  understand that ERS would soon deplete its investment  
24                  assets?

25

1 MR. SUSHON:

2 Object to the form.

3 DEPONENT:

4 I would not be able to be precise when, in January  
5 of 2017, if the Commonwealth understood that it was  
6 depleting that the ERS was depleting its assets. But,  
7 yes, we had an understanding by then that there was a  
8 deficiency.

9 MR. PAPEZ:

10 Q Did the Commonwealth also understand that once  
11 ERS had depleted its assets, additional funding into ERS  
12 would've been needed for ERS to continue meeting its  
13 pension obligations?

14 MR. SUSHON:

15 Object to the form, incomplete hypothetical.

16 DEPONENT:

17 The Commonwealth understood that once the system no  
18 longer had funding, in order to fulfill its payment  
19 obligations, it would have to create mechanisms in order  
20 to fulfill its payment obligations.

21 MR. PAPEZ:

22 Q And those mechanisms would be to increase the  
23 funding into ERS, so that it could meet its pension  
24 obligations going out. Correct?

25

1 MR. SUSHON:

2 Object to the form, incomplete hypothetical.

3 DEPONENT:

4 There could be any number of mechanisms; I cannot  
5 be precise if that was one of them, or if that is one of  
6 them, but there are a number of them.

7 MR. PAPEZ:

8 Q Would you turn to page 213 of Exhibit 4?

9 About three-quarters of the way down the page, there's a  
10 paragraph that begins, "In the opinion of management of  
11 the Retirement Systems..." do you see that?

12 A Yes.

13 Q Okay. It says, "In the opinion of management  
14 of the Retirement Systems and based on information  
15 prepared by consulting actuaries, if measures are not  
16 taken to significantly increase funding to the  
17 Retirement System, in the near term, these will exhaust  
18 their liquidity, and become pay-as-you-go in the near  
19 term." Do you see that?

20 A Yes.

21 Q My first question is, did the Commonwealth  
22 have that understanding in January of 2017?

23 MR. SUSHON:

24 Object to the form.

25

1 DEPONENT:

2 I could not specify if, in January of 2017, that  
3 the Commonwealth had that understanding, but it did know  
4 that there were deficiencies.

5 MR. PAPEZ:

6 Q Did the Commonwealth have an understanding,  
7 before June of 2017, that once ERS depleted its assets,  
8 its investment assets, it would become a pay-as-you-go  
9 system?

10 A Okay. To respond to the question, as of June  
11 2017, the Commonwealth did have an understanding that  
12 ERS would become a pay-as-you-go.

13 Q I'm going to hand you what was marked  
14 yesterday as Exhibit 11. Here you go. And we have  
15 extra copies of it for whoever wants one.

16 MR. SAGARDÍA:

17 This is exhibit what?

18 MR. PAPEZ:

19 This was marked yesterday as Exhibit 11.

20 Q All right. As an initial matter, you  
21 understand that after the passage of the PROMESA Act,  
22 the Commonwealth is required to submit Fiscal Plans to  
23 the Oversight Board. Correct?

24 MR. SUSHON:

25 Objection, beyond the scope.

1 DEPONENT:

2 Yes.

3 MR. PAPEZ:

4 Q Okay. And do you understand that to be an  
5 obligation of the Central Government?

6 MR. SUSHON:

7 Same objection.

8 DEPONENT:

9 I cannot specify that it would be the Central  
10 Government, because there are some definitions as to  
11 what entities are covered.

12 MR. PAPEZ:

13 Q Okay. Have you seen Exhibit 11 before?

14 (Deponent reviews exhibit.)

15 A I saw it for the first time during the  
16 preparation for this deposition.

17 Q All right. If you turn to Page 11, Page  
18 number 11 in Exhibit 11, and look at Box 3 there, it  
19 says, "Provide adequate funding for Public Pension  
20 Systems, and then "comments" going up on "Previous  
21 pension reforms, the Fiscal Plan provides for funding of  
22 Retirement Benefits through payments of the actuarially-  
23 determined AACs and AUCs, for the entities included in  
24 the Fiscal Plan, and additional reforms." Do you see  
25 that?

1                   A     Yes.

2                   Q     Okay. Would you agree with the October 2016  
3                   Fiscal Plan from the Commonwealth proposed providing  
4                   funding of Retirement Benefits through actuarially-  
5                   determined AACs and AUCs?

6                   INTERPRETER:

7                   The date, I'm sorry... Sixteen?

8                   MR. PAPEZ:

9                   Yes. October 2016.

10                  MR. SUSHON:

11                  Objection, beyond the scope.

12                  DEPONENT:

13                  Okay. According to the document that is before me,  
14                  that is what it has included there, but I have no way of  
15                  determining that that would be the actual, or the only  
16                  mechanisms to manage that situation.

17                  MR. PAPEZ:

18                  Q     Okay. At least, as presented on Page 11, the  
19                  comments that the Commonwealth provided stated that "It  
20                  would build upon previous pension reforms, and provide  
21                  for funding of Retirement Benefits, through payments of  
22                  actuarially-determined AACs and AUCs." Correct?

23                  MR. SUSHON:

24                  Objection, beyond the scope. And if it helps you,  
25                  I will stipulate that the words on the page, are the

1       words on the page. You don't have to take up Mr. Peña's  
2       time with questions like that.

3       MR. PAPEZ:

4           Q       You can answer that one.

5           A       What the document states as what I can confirm  
6       is included in the document.

7           Q       All right. Turn to Page 83, please. If you  
8       look at the right-hand column, in the second row down,  
9       it says, "AAC/AUC (Incr. Retirement System Funding.) Do  
10      you see that?

11       A       Yes.

12       Q       Okay, and then it has "Number eleven zero,  
13      that represents eleven billion dollars." Do you see  
14      that?

15      INTERPRETER:

16           Was that "million" or "billion"?

17       MR. PAPEZ:

18           Billion.

19       MR. SUSHON:

20           Object to the form.

21      DEPONENT:

22           Yes.

23       MR. PAPEZ:

24       Q       Okay. Am I correct in understanding that the  
25      Fiscal Plan was, as of October 2016, submitted by the

1 Commonwealth, was proposing eleven billion dollars in  
2 increased funding to ERS, TRS and JRS?

3 MR. SUSHON:

4 Object to the form, and beyond the scope.

5 DEPONENT:

6 The only thing I can confirm is that the document  
7 includes this information about increasing funds to the  
8 ERS, TRS, and JRS at eleven billion, but I have no way  
9 of confirming, I have no way of confirming the basis for  
10 the information.

11 MR. PAPEZ:

12 Q Okay. If you turn to Page 86, do you see,  
13 under "Adjusted Expenses," two lines down, there's  
14 AAC/AUC, and there's a footnote to that. Let me know  
15 when you see it.

16 A Yes.

17 Q Okay. And if you follow that line, all the  
18 way over, the ten-year estimate is \$10.993 billion  
19 dollars?

20 MR. SUSHON:

21 Object to the form.

22 INTERPRETER:

23 "Ten billion"?

24 MR. PAPEZ:

25 "Ten point nine billion."

1 handing Exhibit 5, please.

2 All right. I've placed before you Exhibit 5, which  
3 was marked yesterday. It's a November 23<sup>rd</sup>, 2016 letter  
4 from the Financial Oversight Management Board to then-  
5 Governor García Padilla.

6 A Yes.

7 Q This was after the election in 2016. Correct?

8 MR. SUSHON:

9 Objection, beyond the scope.

10 DEPONENT:

11 To my understanding, yes.

12 MR. PAPEZ:

13 Q When was it that you, and I'm just asking you  
14 personally, understood that you would become the  
15 assistant secretary of Treasury? What day was it, if  
16 you remember?

17 MR. SUSHON:

18 So this is just him personally, not as a...

19 MR. PAPEZ:

20 I just wanted to know when that would be.

21 DEPONENT:

22 Between the second and third week of January of  
23 2017.

24 MR. PAPEZ:

25 Q Okay. When did you know you were going to

1       become an employee of the Commonwealth?

2       MR. SUSHON:

3            Is that also in his personal...

4       MR. PAPEZ:

5           Q      When you knew personally.

6           A      For that same period, between the second and  
7       third week of January.

8           Q      Okay. All right. When you, okay, I am asking  
9       in your capacity as a Commonwealth witness now.

10          Do you understand Exhibit 5 to be a letter from the  
11       Financial Oversight Board, providing comments to the  
12       Commonwealth about the Fiscal Plan that the Commonwealth  
13       had previously submitted?

14          A      I understand that the first part of the letter  
15       is a letter from the Financial Oversight Board,  
16       addressed to the then-Governor. I have not read the  
17       contents, and I would need to read the contents in order  
18       to refresh whatever information.

19          Q      All right. I'll direct you to Page 3.

20          Actually, start on Page 2. Right at the bottom it says,  
21       "Consistent with these principles, the Board requests  
22       that the plan be amended to reflect the principles  
23       stated above, as well as the following points." And  
24       then it goes on.

25          If you turn onto Page 3, Point Number 3 says,

1        "Incorporate a Revised Baseline forecast to reflect pay-  
2        go funding for pension benefits, and segregation of  
3        current employee contributions beginning no later than  
4        2018."

5                Okay. Did the Commonwealth understand the  
6        Financial Oversight Board to be requesting that the  
7        Commonwealth provide a Revised Baseline forecast to  
8        adopt pay-go funding for pension benefits?

9        MS. DALE:

10               Objection to the form.

11        MR. SUSHON:

12               And beyond the scope.

13        DEPONENT:

14               Based on the letter here, it is a request made by  
15        the Board to the then-Governor.

16        MR. SUSHON:

17               Are you done with this one for now?

18        MR. PAPEZ:

19               Yeah. I'd like you to mark that. Which one is  
20        that?

21        COURT REPORTER:

22               Twenty-one.

23        MS. DALE:

24               Twenty-one?

25

1 MR. PAPEZ:

2 Yes.

3 MR. SUSHON:

4 Matt, this doesn't have Bates numbers on it. Do  
5 you know where it came from?

6 MR. PAPEZ:

7 It was down-loaded from, from the FOMB web site.

8 It may have also been from the AAFAF web site. It was  
9 either FOMB or AAFAF web site.

10 Q My first question, sir, is have you seen this  
11 document before?

12 (Deponent reviews document.)

13 A No.

14 Q All right. Let's just go through it. Turn to  
15 Page 3 of the document. Just right up at the top it  
16 says, "Pursuant to the request of the Oversight Board,  
17 and based on revised assumptions developed in  
18 cooperation with the Oversight Board, the Commonwealth  
19 prepared updated baseline projections." Do you see  
20 that?

21 A Yes.

22 Q All right. And we have just seen, in the  
23 prior document, that the Oversight Board had actually  
24 requested updated baseline projections. Correct?

25

1 MR. SUSHON:

2 Object to the form you may answer.

3 DEPONENT:

4 That is correct.

5 MR. PAPEZ:

6 Q Okay. Would you agree that this December 20,  
7 2016 Revised Baseline projections are in response to the  
8 efforts being request?

9 MR. SUSHON:

10 Objection, beyond the scope.

11 DEPONENT:

12 I can agree that the document states what we have  
13 just read. I cannot guarantee that the document is, in  
14 fact, a response to the request that we have just read.

15 MR. PAPEZ:

16 Q Please turn to Page 7 of the document, please.  
17 Do you see this chart provides, as it says up at the top  
18 a "Summary of the changes incorporated in the Revised  
19 Baseline forecast, as well as the accumulative ten-year  
20 impact of those changes on October, based on  
21 projections." Do you see that.

22 MR. SUSHON:

23 Object to the form.

24 DEPONENT:

25 I see that, yes.

1 MR. PAPEZ:

2 Q All right. And then there's a chart, and it  
3 has, the third column summarizes the October baseline  
4 projections and its exceptions. Do you see that?

5 A I can see that that is the heading in the  
6 column.

7 Q All right. And then it summarizes, there's a  
8 box for pensions, and it summarizes the October baseline  
9 projections as including Additional Uniform  
10 Contributions were required to be paid to ERS. Do you  
11 see that?

12 INTERPRETER:

13 Could you repeat that?

14 MR. PAPEZ:

15 Q If you look in the row for pensions, it states  
16 that "The October baselines projections included the  
17 Additional Uniform Contribution required to be paid to  
18 ERS."

19 MR. SUSHON:

20 Object to the form.

21 DEPONENT:

22 I can see that that is the text on the document.

23 MR. PAPEZ:

24 Q And that's also what we saw in the October  
25 2016 Fiscal Plan, that we saw, that we covered earlier,

1                   correct?

2                   MR. SUSHON:

3                   Object to the form, and beyond the scope.

4                   DEPONENT:

5                   Not verbatim, but in general terms, yes.

6                   MR. PAPEZ:

7                   Q       And then if you look on the far right-hand  
8                   column, it has the "Revised Baseline Projections  
9                   Assumption." Do you see that?

10                  A       I can see the heading, yes.

11                  Q       And in the row for pensions, it says, "The  
12                  Revised Baseline Projections assume that the  
13                  Commonwealth no longer makes AUC/AAC payments, including  
14                  past-due amounts. Instead, existing Pension System  
15                  assets, employer contributions, and investment income  
16                  are used to fund benefit payments." Do you see that?

17                  A       Yes, I can see that text in the document.

18                  Q       All right. Was this the change from, strike  
19                  that. "Existing" if you see, in the second sentence  
20                  that I just read to you, it says, "Existing Pension  
21                  System Assets, employer contributions, and investment  
22                  income are used to fund benefit payments." Do you see  
23                  that?

24                  A       Yes, I can see that.

25                  Q       Okay. "The Existing Pension System Assets,"

1       income." What do you understand the investment income  
2       there to be referring to?

3       MR. SUSHON:

4               Objection, beyond the scope.

5       DEPONENT:

6               I can have a general understanding of what "an  
7       investment income" is, but I cannot specify what income  
8       investment is being referred to in this document.

9       MR. PAPEZ:

10              Q       Would you again defer to ERS on that?

11       MR. SUSHON:

12               Objection, beyond the scope.

13       DEPONENT:

14               I believe it could be answered by ERS.

15       MR. PAPEZ:

16              Q       Okay. What do you understand "employer  
17       contributions" in that sentence to mean?

18       MR. SUSHON:

19               Objection, beyond the scope.

20       DEPONENT:

21               I understand that it could be the employer  
22       contributions that are legislated, that the employers  
23       would be transferring to ERS.

24       MR. PAPEZ:

25              Q       Do you see, in the second column there, it

1       says, "Impact over ten years," and it has a minus \$678  
2       million?

3           A       Yes.

4           Q       Do you understand that to mean that the  
5       Revised Baseline projections would have the effect of  
6       increasing the deficit by \$678 million over ten years?

7       MR. SUSHON:

8               Object to the form, and it's beyond the scope.

9       DEPONENT:

10              Okay, based on the document that is before me, I  
11       cannot project that this would increase the deficit,  
12       because I don't have the information for that.

13       MR. PAPEZ:

14           Q       Okay. If you turn to Page 9. About a third  
15       of the way down the page it says, "Retirement System  
16       Contributions." Do you see that?

17               (Deponent views document.)

18           A       The line with Footnote Number 1?

19           Q       Yes.

20           A       I see it.

21           Q       Okay. And then, in the lines below, it has a  
22       line for October baseline projections, Revised Baseline  
23       projections, and then Delta. Do you see that?

24           A       I see it.

25           Q       Okay. And after Delta, it says in parenthesis

1 ("if positive, a reduction in the deficit.")

2 A That is in the text in the document.

3 Q Okay. And if you follow it all the way over  
4 to the ten-year mark, the Delta line, it has parenthesis  
5 (\$678) and it's (in millions.) Do you see that?

6 A Yes, I see it.

7 Q All right. So now, would you agree with me  
8 that, at least what was projected by this document, that  
9 the Revised Baseline projections for the Pension System  
10 would have increased the deficit by \$678 million over  
11 the October baseline projections?

12 MR. SUSHON:

13 Object to the form, and beyond the scope.

14 DEPONENT:

15 I can testify that the document states that it has  
16 \$678 million, and referring to a reduction in the  
17 deficit. I cannot comment on the information that was  
18 used, nor what deficit it refers to.

19 MR. PAPEZ:

20 Q All right. Would you agree that it states on  
21 the document that The Revised Baseline projections, from  
22 December 2016, would require increased expenditures of  
23 \$678 million over a ten-year period, versus the October  
24 baseline projections?

25

1 MR. SUSHON:

2 Object to the form, and beyond the scope.

3 DEPONENT:

4 According to the document, it indicates that it is  
5 a Delta, and because it is a negative, it would indicate  
6 a reduction in the deficit.

7 MR. PAPEZ:

8 Q And if you go over to the very left-hand side,  
9 in the Delta, it says, "Delta," and then it says  
10 parentheses (if positive, a reduction in the deficit.)

11 A That is correct.

12 Q Okay, and so then the \$678 million would  
13 actually be an increase in the deficit.

14 MR. SUSHON:

15 Objection, beyond the scope.

16 DEPONENT:

17 Based on the text in the document, that is correct.

18 MR. PAPEZ:

19 Q Okay. If you turn to Page 12 and this will be  
20 the last page on this document this table presents "A  
21 summary of the expenditures included in the Revised  
22 Baseline Projections." Do you see that?

23 A I can see it in the title.

24 Q All right. Would you go down to Rows 55 and  
25 56, it refers to "Pay-go contributions in excess of

1 Asset Balance."

2 A I can see that.

3 Q All right. Are those pay-go contributions in  
4 excess of asset balance, a reference to the additional,  
5 strike that, and let me start over.

6 Are those pay-go contributions in excess of asset  
7 balance are reference to the employer contributions,  
8 that we looked at earlier, on Page 7?

9 MR. SUSHON:

10 Object to the form, and beyond the scope, and mis-  
11 characterizes the document.

12 DEPONENT:

13 Based in the text in the document, I cannot state  
14 that it refers to the same thing.

15 MR. PAPEZ:

16 Q Okay. You can't make that assessment one way  
17 or the other, as you sit here today?

18 MR. SUSHON:

19 Objection. Beyond the scope.

20 DEPONENT:

21 No, I cannot do that.

22 MR. PAPEZ:

23 Okay. All right. Please give Exhibit 6 to Mr. Peña.

24 Q Okay, my first question is, have you seen Exhibit  
25 6 before?

1 (Deponent reviews exhibit.)

2 A Yes.

3 Q Okay. Was it in preparation for today, or did  
4 you see at the time in 2017?

5 MR. SUSHON:

6 I'm going to object. You're not allowed to get  
7 into my attorney work product as to what I showed him in  
8 preparation for today's deposition.

9 MR. PAPEZ:

10 I know. That's fine. I don't care.

11 Q Did you see it back at the time it was  
12 prepared?

13 A Once it was published, yes.

14 Q Did you assist in preparing it? And by "you,"  
15 I mean, "you, Mr. Peña."

16 A No.

17 Q Okay. First, if you could turn to page 92 in  
18 the document. Right up at the top there's a reference  
19 to the "Treasury Single Account." Do you see that?

20 A Yes.

21 Q Yesterday, we asked the witness for what he  
22 thought what that was, and he referred us to the  
23 Commonwealth, so, and the Department of Treasury. So,  
24 I'm going to ask you, what is the Treasury Single  
25 Account?

1                   A     The TSA is a group of bank accounts which are  
2     presented as the operating accounts under the Department  
3     of the Treasury.

4                   Q     And there are several accounts, not just one?

5                   A     That is correct.

6                   Q     All right. In the second box, from the top  
7     there, it says, "Outside TSA pool." And if you go over  
8     into the right-hand column there, it has "pension funds"  
9     as being "outside the TSA pool." Do you see that?

10                  A     The line with Footnote 2?

11                  Q     Right.

12                  A     I see it.

13                  Q     What does it mean for the pension funds to be  
14     "outside the TSA pool"?

15                  A     Okay. That the pension funds of the ERS are  
16     not part of the structure of bank accounts of the TSA.

17                  Q     And if you look at Footnote 2, it says, "TRS  
18     and ERS manage the fund assets, which are periodically  
19     liquidated to transfer to the TSA for the payment of  
20     benefits." Do you see that?

21                  A     I see that, yes.

22                  Q     Does that mean that periodically ERS transfers  
23     funds into the TSA accounts?

24     MR. SUSHON:

25                  Object to the form. Are you asking as of today, or

1 as of that date..

2 MR. PAPEZ:

3 As of the date of the document. Let me start over.

4 DEPONENT:

5 Up to the date of the document or as of...

6 MR. PAPEZ:

7 Let me just start over.

8 INTERPRETER:

9 Okay.

10 MR. PAPEZ:

11 Q Does Footnote 2 mean that in February of 2017,  
12 ERS would periodically liquidate some of its assets, and  
13 transfer the proceeds to the TSA?

14 A Yes, I see that.

15 Q Is that what it means? Is that how it  
16 happened?

17 A Yes, the TSA received monies transferred from  
18 the ERS.

19 Q Do you know how often that occurred, back in  
20 the February 2017 time-frame?

21 A The frequency could have been once every two  
22 months, as such.

23 Q Did it vary, in terms of, sometimes it was,  
24 sometimes it happened more often, and sometimes it  
25 happened less often?

1                   A     That is the frequency in the period from  
2     January to June, that I know of.

3                   Q     Okay. If you turn to Page 62 in the  
4     document... In the right-hand column, you'll see  
5     "Specific Initiatives." Do you see that?

6                   A     Yes, I see it.

7                   Q     And the first one says, "Switch to pay-as-you-  
8     go model to cover remaining defined benefit  
9     obligations."

10                  A     That's what the document says.

11                  Q     Okay. Did you understand that the  
12     Commonwealth was, at this point, proposing in its Fiscal  
13     Plan to formally "Switch to a pay-as-you-go model, to  
14     cover remaining defined benefit obligations?

15                  A     At a conceptual level, yes.

16                  Q     Okay. At the conceptual level, at this point,  
17     was the pay-as-you-go model still conceived to be within  
18     ERS?

19     MR. SUSHON:

20                  I object to that on the grounds of deliberative  
21     process privilege and instruct you not to answer.

22     MR. PAPEZ:

23                  Q     Are you going to follow your attorney's  
24     instruction?

25                  A     Yes.

1 MR. SUSHON:

2 ...I won't allow Mr. Peña to testify about that.

3 MR. PAPEZ:

4 I guess, then let me, I'm going to speak clear,  
5 then.

6 Q And if you need to Mr. Peña, just wait a  
7 minute, and let Mr. Sushon assert deliberative process  
8 before you answer, if he is going to assert it. Okay?

9 A Yes.

10 Q In February, in February of 2017, how was it  
11 contemplated that the switch to the pay-as-you-go model  
12 would address the cash-flow shortfall of the ERS System?

13 MR. SUSHON:

14 Please translate my objection. Francisco, in  
15 answering this question, you can testify about the  
16 anticipated effect of the pay-as-you-go forms that were  
17 actually adopted by the Commonwealth. To the extent  
18 that you would answer based on other potential reforms,  
19 you should not provide that information, because it is  
20 deliberative process privilege.

21 MR. PAPEZ:

22 Q Can you answer?

23 A Can you repeat the question for me?

24 (Laughter.)

25 Q Okay. In February of 2017, how was it

1       contemplated that the switch to the pay-as-you-go model  
2       would address the cash-flow shortfall?

3           A       Basically, it was a mechanism to identify the  
4       resources that would guarantee the payment of the  
5       pensions.

6           Q       Okay. And what resources are you referring to  
7       that would guarantee the payment of the pensions?

8           A       I cannot answer that question, because there  
9       were several sources, and it was part of what was being  
10      evaluated.

11          Q       So, would your answer then fall within Mr.  
12      Sushon's instruction not to reveal deliberations?

13          A       That is correct.

14          Q       In the second box there, on the top it says,  
15      "Maintain quality of life," and you go over to the  
16      strategy, there's two bullets, "Protect benefits for  
17      lowest pension income earners, and a progressive  
18      strategy to reduce retirement benefit costs." Do you  
19      see that?

20          A       I can see that, yes.

21          Q       Are those two bullets referring to a potential  
22      decrease in pension benefits that would be paid to at  
23      least some retirees?

24      MR. SUSHON:

25          I object on the grounds that that's beyond the

1 scope.

2 DEPONENT:

3 I understand that these two points refer to the  
4 risk that there would be if pension payments are not  
5 made.

6 MR. PAPEZ:

7 Q What do you mean by "the risk"?

8 MR. SUSHON:

9 The same objection.

10 DEPONENT:

11 Consequences.

12 MR. PAPEZ:

13 Q I'm just going to ask: Was the Commonwealth  
14 contemplating reducing pension benefits to some  
15 retirees, as of February of 2017?

16 MR. SUSHON:

17 Objection, beyond the scope.

18 DEPONENT:

19 I understand that it wasn't.

20 MR. PAPEZ:

21 Q Turn to Page 124 in the document. Point 14,  
22 in the very last checkmark at the bottom, says, "The  
23 Fiscal Plan does not contemplate any violation, of the  
24 lawful priorities or liens in the Puerto Rico  
25 Constitution, laws and agreements, in effect prior to

1                   the enactment of PROMESA." Do you see that?

2                   A        Yes, I see it.

3                   Q        What did the Fiscal Plan propose with regard  
4                   to the payment of the ERS pension bonds?

5                   MR. SUSHON:

6                   Object to the form. The best evidence of what the  
7                   Fiscal Plan proposes is in the Fiscal Plan.

8                   DEPONENT:

9                   I don't recall. I cannot recall the information in  
10                   order to answer this question.

11                   MR. PAPEZ:

12                   Q        What did the Fiscal Plan contemplate with  
13                   regard to the security interests that, or the liens,  
14                   that were securing the payment of the ERS pension bonds?

15                   MR. SUSHON:

16                   The same objection. The best evidence of what the  
17                   Fiscal Plan contemplated is in the Fiscal Plan.

18                   DEPONENT:

19                   I have no knowledge of what the Fiscal Plan says,  
20                   regarding your question.

21                   MR. PAPEZ:

22                   Q        All right, you can put that document aside.

23                   MR. SUSHON:

24                   Would this be a good time for a break?

25

1 MR. PAPEZ:

2 Yeah, sure, fine.

3 OFF THE RECORD.

4 COURT REPORTER:

5 This one is 22.

6 MR. PAPEZ:

7 Twenty-two?

8 COURT REPORTER:

9 Yes. Okay, we're on record.

10 MR. PAPEZ:

11 Q Okay. Mr. Peña, I've handed you what I've  
12 marked as Exhibit 22. Do you recognize this as the  
13 Fiscal Plan for Puerto Rico, dated March 13<sup>th</sup>, 2017?

14 (Deponent reviews document.)

15 A I'm not sure it's the final one, but, yes, I  
16 have seen a document similar to this one.

17 Q Okay. And for everybody's benefit, we printed  
18 this off. Again, either it would have been the FOMB web  
19 site or the AAFAF web site, I think this was probably  
20 FOMB. Okay, if you could turn to Page 13 of the  
21 document, on the bottom-right corner. All right. You  
22 see this is a page showing "Assumptions and  
23 Methodology," listing various expenses.

24 A That is the title, yes.

25 Q Okay. And these would be assumed expenses for

1       answers to what this means in the Fiscal Plan.

2       MR. PAPEZ:

3           Q       At this point in time, of March 2017, was the  
4       proposal for Pay-Go contributions to be put into ERS?

5       MR. SUSHON:

6           I'm going to object to that on the grounds of  
7       deliberative process privilege, to the extent that it  
8       goes into proposed plans that were not adopted.

9           I instruct you not to answer with respect to those.

10       MR. PAPEZ:

11       Q       Can you provide an answer without violating  
12       your attorney's instructions?

13       A       Can you repeat the question, please?

14       Q       Sure. In March of 2017, was there a proposal  
15       within the Commonwealth to have Pay-Go contributions  
16       paid into ERS?

17       MR. SUSHON:

18           And the same objection and instruction applies.

19       DEPONENT:

20           I cannot answer that question.

21       MR. PAPEZ:

22       Q       Okay. Because of your attorney's  
23       instructions?

24       A       That is correct.

25       Q       Okay. Turn to page, hang on, 27 of the

1 MR. PAPEZ:

2 Q All right. Now, let's go back to Point 1 on  
3 Exhibit 23. It says, "Fund existing pension  
4 obligations, on a Pay-Go basis, liquidating assets to  
5 help fund benefits, and using General Fund revenues to  
6 pay benefits owed under previous plans." Do you see  
7 that?

8 A I see it.

9 Q Okay. Switching to a Pay-Go model was also in  
10 Exhibit 22, which was the March 13<sup>th</sup> , 2017 Fiscal Plan  
11 that the Commonwealth submitted. Correct?

12 MR. SUSHON:

13 Objection. The best evidence of what's in the  
14 Fiscal Plan is the Fiscal Plan.

15 I'm not joking. I will stipulate that every  
16 document has the words the document has in it, and maybe  
17 we can speed this along.

18 MR. PAPEZ:

19 All right.

20 Q Okay.

21 A Based on the documents before me, they use  
22 similar language, therefore I cannot differentiate.

23 Q Okay. Going on, in Point 1 of Exhibit 23, it  
24 refers to "liquidating assets to help fund benefits."  
25 And then it says, "...and using General Fund revenues to

1 MS. GORDON:

2 To include the exhibit numbers when he's  
3 referencing them.

4 INTERPRETER:

5 Okay. That would be, okay, let me repeat.

6 (Interpreter translates question again.)

7 MR. SUSHON:

8 I'm going to object. The best evidence of what's  
9 in the Fiscal Plan is the Fiscal Plan.

10 DEPONENT:

11 I cannot understand that question, in a document as  
12 extensive as the Fiscal Plan, if in effect it mentions  
13 it, and I understand that if there is any reference to  
14 that in the Fiscal Plan, AAFAF would be the best agency  
15 to answer the question.

16 MR. PAPEZ:

17 Q All right. What does it mean to "use General  
18 Fund revenues to pay benefits owed under a previous  
19 pension plan"?

20 MR. SUSHON:

21 Objection, foundation.

22 DEPONENT:

23 To me, it means what the text itself says. Use  
24 revenues from the General Fund to pay benefits in the  
25 Pension Plans.

1 MR. PAPEZ:

2 Q Okay. And what is the "General Fund"?

3 A The General Fund is the Operational Fund for  
4 the Government of Puerto Rico to cover its governing  
5 activities. Or its Government activities.

6 MR. SUSHON:

7 Object to the form. Did you mean "General Fund"  
8 divorced from this document, Exhibit 23, or "General  
9 Fund" as used in Exhibit 23 there?

10 MR. PAPEZ:

11 Q Did you understand my question, sir?

12 MR. SUSHON:

13 Matt, I've asked you to clarify it. He's not going  
14 to answer the question until I understand the question.

15 MR. PAPEZ:

16 Well, he did answer the question, based on his  
17 understanding. And so I'm asking him and you've noted  
18 your objection, and that's fine.

19 MR. SUSHON:

20 I didn't, I'm going to have a chance to interject  
21 my objection, and I'm interjecting it now. I've asked  
22 you to clarify your question, and you need to clarify  
23 your question before he is going to answer it. I need  
24 to understand it.

25

1       you want to know what General Fund means.

2       MR. PAPEZ:

3           Let's do it this way.

4       Q     Is there, put aside Exhibit 23. What does the  
5       General Fund mean? What is the General Fund?

6       A     My definition of the General Fund is the one  
7       included in the Audited Financial Statements, and it is  
8       the Government's Operating Fund in order to carry out  
9       its activities.

10       Q     Under the Retirement System, as it existed  
11       before June of 2017, we earlier covered that, "payments  
12       to pensioners would be made from the Treasury  
13       Department, and then the Treasury Department would seek  
14       reimbursement from ERS." Correct?

15       MR. SUSHON:

16           Objection. Mis-characterizes his testimony.

17       DEPONENT:

18           The disbursements come from the secretary of the  
19       Treasury account, and then reimbursement is requested  
20       from the ERS.

21       MR. PAPEZ:

22       Q     So now then, getting back to Exhibit 23, when  
23       it says that "Funding existing pension obligations on a  
24       Pay-Go basis, liquidating assets to help fund benefits,  
25       and using General Fund revenues to pay benefits owed

1 under previous plans."

2 When the Oversight Board requested that enrollment  
3 to the Fiscal Plan, did the Commonwealth understand the  
4 Oversight Board to be requesting that payments to  
5 pensioners be made from the Commonwealth General Fund?

6 MR. SUSHON:

7 Object to the form.

8 DEPONENT:

9 The Government understood that it was one of the  
10 mechanisms it was suggesting, based on the Resolution.

11 MR. PAPEZ:

12 Q And the Government of Puerto Rico eventually  
13 adopted that suggestion. Correct?

14 A The Government of Puerto Rico developed a new  
15 pension system.

16 Q And under the new pension system, the revenues  
17 to pay previous pension obligations come from the  
18 Commonwealth General Fund. Is that right?

19 A When you say "previous plans," do you mean  
20 "retirement plans"?

21 Q Yes.

22 A Okay. Can you repeat the question, please?

23 Q Sure. Under the new system that the  
24 Commonwealth has adopted, do the revenues, that are used  
25 to pay pensions under previous pension plans, come from

1 the Commonwealth General Fund?

2 A It is one of the income sources; it's not all  
3 of it.

4 Q Okay. The other or another income source are  
5 Pay-Go fees, correct?

6 A That is correct.

7 Q Okay. Under the new system that has been in  
8 place since July 1<sup>st</sup>, 2017, does the Treasury Department  
9 actually make the payments to pensioners still?

10 A To the payment plans or to the retirees?

11 Q To the retirees.

12 A That is correct.

13 Q Is it still in the form of actual physical  
14 checks?

15 A It is one of the payment methods.

16 Q And another payment method would be the direct  
17 deposit?

18 A That is correct.

19 Q Is the accounts, that either the check or the  
20 direct deposit is drawn on, one of the TSA accounts?

21 A That is correct.

22 Q With regard, and when the Treasury Department  
23 sends out the retirement monies to the pensioners, does  
24 it then request reimbursement in the form of Pay-Go fees  
25 from some entity? Just start that.

1                   A     The Pay-Go fees are requested from  
2     Municipalities and Public Corporations.

3                   Q     Does the Commonwealth Central Government, pay  
4     Pay-Go fees to reimburse for the payment of pensions?

5                   A     From the point of view of monies, of paying  
6     out monies, it is not in effect a transfer of monies, it  
7     is accounted, the accounting of it goes in as an  
8     expense, as an expense to the payroll fees.

9                   Q     Okay. So, just so I understand then, for the  
10   portion of the Pay-Go fees that the Commonwealth Central  
11   Government is responsible for, there is no actual  
12   transfer of funds from one account to another.

13                  A     For the purposes of Pay-Go fees, that is  
14   correct.

15                  Q     And, instead, it is just an accounting entry  
16   in the various accounts.

17                  A     That is correct.

18                  Q     Now, with regard to the Pay-Go fees that are,  
19   let's start with the Public Corporations, those are  
20   obligated to pay. Is there a specific fee references to  
21   a trust fund, that those are paid into? Is that how it  
22   works?

23   MR. SUSHON:

24                  Object to the form.

25

1 DEPONENT:

2                   What trust funds are you referring to, in order to  
3                   answer the question?

4 MR. PAPEZ:

5                   Uhhh... Can you hand him Exhibit 10, please?

6                   Q        Mr. Peña, this is a copy of Act 106. There's  
7                   an English translation and a Spanish version in the  
8                   back. You're welcome to refer to whichever one you'd  
9                   like. I'm going to refer to the Spanish version--

10                  Okay. Section 2; it's on Page 17 of the English  
11                  version, all right, it says, "The accumulated Pensions  
12                  Payment Account is hereby created under the auspices of  
13                  the Treasury Department, which will be kept in a trust  
14                  fund separate from the general assets and accounts of  
15                  the Government, which will operate under a pay-as-you-go  
16                  system for the payment of pensions accumulated by the  
17                  Retirement Systems." And then it goes on.

18                  So my first question is, has the Central Government  
19                  created, under the auspices of the Treasury Department,  
20                  a trust fund separate from the general assets and  
21                  accounts of the Central Government?

22                  A        The accounts that were opened are bank  
23                  accounts, they were not trusts, and they are maintained  
24                  separate from the other accounts of the Government of  
25                  Puerto Rico.

1                   Q     Okay. So, just so I understand, they're just  
2     normal bank accounts, they're not trust bonds, but  
3     they're still separate from General Funds or other TSA  
4     accounts.

5                   MR. SUSHON:

6                   Object to the form.

7                   DEPONENT:

8                   That is correct.

9                   MR. PAPEZ:

10                  Q     Do the Public Corporations in the  
11     Municipalities pay their Pay-Go fees into those separate  
12     bank accounts that we just discussed?

13                  A     That is correct.

14                  Q     And then, as I understand it, periodically the  
15     Treasury Department sweeps those, the funds from those  
16     separate accounts, in order to collect the Pay-Go fees  
17     that the Municipalities and Public Corporations paid.

18     Is that correct?

19                  A     That is correct.

20                  Q     How often does that process happen? The  
21     sweeping process happen?

22                  A     Currently, it is on a daily basis.

23                  Q     So, as of midnight, on any given day, there  
24     could be zero funds in those separate accounts. Is that  
25     correct?

1 MR. SUSHON:

2 Object to the form.

3 DEPONENT:

4 That is correct.

5 MR. PAPEZ:

6 Q And the most that would ever accumulate in  
7 those separate accounts would be whatever Pay-Go fees  
8 are paid on any given day. Is that correct?

9 A Given the nature of the account, I believe so.

10 MR. PAPEZ:

11 What is this one?

12 COURT REPORTER:

13 Twenty-four.

14 MR. SUSHON:

15 This is Exhibit number what?

16 MR. PAPEZ:

17 That's Exhibit 24.

18 Q All right. Several minutes ago, we were  
19 discussing the FOMB certification of the March 2017  
20 Fiscal Plan.

21 Exhibit 24, that I've just placed in front of you,  
22 has a box up in the corner, it says, "Conform to include  
23 amendments from March 13, 2017 corrections from April  
24 15, 2017."

25 My question is: Did the Commonwealth revise or

1 MR. PAPEZ:

2 Q In private, has other and now I'm talking  
3 about, I'm not talking about your conversations with  
4 attorneys, I'm talking about the Commonwealth. Does the  
5 Commonwealth view the Oversight Board's requested  
6 amendments as mandatory, even if they don't acknowledge  
7 it to the public?

8 MR. SUSHON:

9 I object to the form, and I object to your  
10 snickering at the witness.

11 MR. PAPEZ:

12 I was not snickering.

13 MS. DALE:

14 Objection to form.

15 DEPONENT:

16 The question is based on the recommendations to the  
17 Fiscal Plan?

18 MR. PAPEZ:

19 Q All right, let me rephrase it. When the  
20 Oversight Board requests amendments to the Fiscal Plan,  
21 does the Commonwealth view those requested amendments as  
22 mandatory, even if it won't openly say to the public  
23 that they are mandatory?

24 MR. SUSHON:

25 I object to the form. And, again, instruct you, to

1       answer to the extent that any information you have, that  
2       would be responsive to this question, is legal advice  
3       from your attorneys, you shouldn't testify about that.

4               Subject to that, you can answer the question.

5       DEPONENT:

6               Based on the public statements that have been made,  
7       the public is going to assume that they are  
8       recommendations.

9       MR. PAPEZ:

10              Q       Has the Oversight Board ever requested an  
11       amendment that the Commonwealth has refused to make?

12       MR. SUSHON:

13               Objection, beyond the scope.

14       DEPONENT:

15               In terms of that last letter, I would not be able  
16       to answer that because that goes to decisions on Public  
17       Policy.

18       MR. PAPEZ:

19              Q       Okay. In any event, if you could turn to Page  
20       22(a), Exhibit 24...of Exhibit 24, I should say. All  
21       right, on Page 22(a). There you go.

22               Do you see here, "Amendment Number 2, Pension  
23       Amendment to the Commonwealth Proposed Fiscal Plan," and  
24       then it appears to be the amendments that the Oversight  
25       Board requested, that we had just gone over in the prior

1                   Q     Let's move on. If you turn further into  
2     Exhibit Number 24, there's an Exhibit A that has been  
3     added to it.

4                   MR. SUSHON:

5                   Object to the form.

6                   MR. PAPEZ:

7                   Q     And you see it referenced on the front page.  
8     The front page of Exhibit 24 says, "See Exhibit A for  
9     AAFAF letter from May 31<sup>st</sup>, 2017." Do you see that, in  
10   the letter box?

11                  A     Yes.

12                  Q     Okay. So, if you turn towards the back of the  
13   document, there's Exhibit A. And it's the May 31<sup>st</sup>  
14   letter from AAFAF.

15                  MR. SUSHON:

16                  Is there a question?

17                  MR. PAPEZ:

18                  Yeah, I was just thinking about it.

19                  Q     You see the first set, the first couple  
20   paragraphs refer to the Oversight Board making certain  
21   revisions to the Revenue Forecast for Fiscal Year 2018?

22                  MR. SUSHON:

23                  Object to the form.

24                  DEPONENT:

25                  I see it.

1 MR. PAPEZ:

2 Q Okay. In the fourth bullet, it says, "Pay-Go  
3 Reimbursements, General Fund, Additional Revenue of \$390  
4 million should be added to the General Fund due to  
5 pension reimbursements, and other agencies, and asset  
6 sales, subject to continuing diligence." Do you see  
7 that?

8 A I see it.

9 Q Yeah. Do I understand that to, well, what do  
10 you understand that to mean?

11 MR. SUSHON:

12 Object to the form.

13 DEPONENT:

14 Well, the text of the letter says that "it is  
15 considered additional income to cover payment of pension  
16 funds."

17 MR. PAPEZ:

18 Q Okay. And, so what I understand then is that,  
19 based on revisions made in May of 2017, an additional  
20 \$390 million would be added to the General Fund of the  
21 Commonwealth to account for Pay-Go fees that are paid  
22 from other agencies. Is that correct?

23 MR. SUSHON:

24 Objection, lacks foundation. Matt, you want the  
25 witness to tell you what you understand?

1 MR. PAPEZ:

2 Q Do you agree with my characterization?

3 MR. SUSHON:

4 Objection.

5 DEPONENT:

6 I honestly did not understand the question.

7 MR. PAPEZ:

8 Q All right, fine. Turn to the next page, Page  
9 3 of the document. The last page, do you see a chart  
10 that says, "Fiscal Year Ending June 30"?

11 A I see it.

12 Q And then there's, the top part of the chart  
13 has the General Fund revenues, and then it lists the  
14 various sources of revenue. Do you see that?

15 A I see it.

16 Q And these General Fund revenues are revenues  
17 into the Commonwealth General Fund, correct?

18 A Based on the table in front of me, that is  
19 correct.

20 Q Okay. The fourth entry, up from the bottom,  
21 in that section says, "Pay-Go Reimbursement." Do you  
22 see that?

23 A That is correct.

24 Q And, the Certified Fiscal Plan of 2018, that  
25 showed "zero," correct?

1           A     Based on the document presented, that is  
2     correct.

3           Q     Okay. And then in the revised 2018 column, it  
4     shows \$390 million, for Pay-Go reimbursement. Correct?

5           A     That is correct.

6           Q     All right. So, now, then going back to my  
7     original question, was \$390 million added to the General  
8     Fund revenues on account of Pay-Go reimbursements  
9     sometime after the March 2017 Fiscal Plan was certified?

10          A     Based on the document, and regarding the  
11     Fiscal Plan, I believe so.

12          Q     Okay, I want you to turn back to the first  
13     page of that appendix. The last bullet.

14     MR. SUSHON:

15           The letter from AAFAF?

16     MR. PAPEZ:

17           Right, yeah.

18          Q     So, the last bullet in the May 31<sup>st</sup>, 2017  
19     AAFAF letter says, "Pay-Go reimbursements, other income,  
20     additional revenue of \$344 million should be added to  
21     the other Income Fund, due to pension reimbursements  
22     from other agencies and asset sales, subject to  
23     continuing diligence." Do you see that?

24          A     Yes, I see it.

25          Q     Okay, my first question is: What's the

1 difference between "General Fund" and "Other Income"?

2 MR. SUSHON:

3 Objection. Is that with respect to the way they're  
4 used in this document, or just as a General Fund?

5 MR. PAPEZ:

6 Well, let's first talk about they're used in the  
7 document.

8 MR. SUSHON:

9 Okay. So he's asking you how it's used in the  
10 document, and what's the difference between those two  
11 terms.

12 DEPONENT:

13 The General Fund receives monies from the Govern-  
14 ment Revenues, General Government Revenues, versus other  
15 incomes which are income sources that are specifically  
16 identified.

17 MR. PAPEZ:

18 Q Does "Other Income" go into the General Fund?  
19 Just in general, not in respect to this document.

20 A Yeah, the general rule is that the General  
21 Fund receives revenues from, general revenues normally  
22 known as "taxes."

23 Q Now, let's turn to the Page 3 again, that you  
24 looked at earlier. There is about two-thirds of the way  
25 down in that box, there is a sub-total for General Fund

1       revenue, and then two lines down from that, there's  
2       another entry for "Pay-Go Reimbursement." Do you see  
3       that?

4           A       That is correct.

5           Q       And, again, if you look back, that "Pay-Go  
6       Reimbursement" in that line is \$344 million, which  
7       matches up to the \$344 million that was referenced in  
8       the last bullet of the May 31<sup>st</sup>, 2017 letter.

9       MR. SUSHON:

10           Object to the form.

11       DEPONENT:

12           Based on the document, that is correct.

13       MR. PAPEZ:

14           Q       All right. Now, the \$344 million dollar  
15       entry, in the second "Pay-Go Reimbursement" line would  
16       be in addition to the \$390 million, in the first "Pay-Go  
17       Reimbursement" line. Is that correct?

18           A       Based on the document, and my understanding of  
19       it, that would be correct.

20           Q       So, I'll venture some math here, between the  
21       \$390 million and the \$344 million, that's \$734 million  
22       into the Commonwealth General Fund as a result of the  
23       May 31<sup>st</sup>, 2017 letter. Is that correct?

24       MR. SUSHON:

25           I object to requiring the witness to do math.

1                   A     I can see that.

2                   Q     Okay. Those other entries, let's just take  
3     the first one, "Additional SUT." And then it has some  
4     entries. Those revenue figures, for "Additional SUT,"  
5     are they put in the General Fund?

6     MR. SUSHON:

7                   Object to the form.

8     DEPONENT:

9                   The General Fund. My answer to that is, they are  
10    not part of the General Fund.

11    MR. PAPEZ:

12                   Q     Are they, Let's then talk about the second  
13    Pay-Go Reimbursement for \$344 million.

14                   A     According to the table herein, they are not  
15    revenues to the General Fund.

16                   Q     What are they revenues to?

17                   A     According to my understanding, they must be  
18    revenues from payroll fees.

19                   Q     In which account are they credited to?

20                   A     When you refer to "accounts," are you  
21    referring to bank accounts, or accounting accounts?

22                   Q     Well, let's first start with bank accounts.

23                   A     They are deposited in the bank account that  
24    was opened for that purpose.

25                   Q     And then those were the funds that would be

1       swept out on a daily basis. Correct?

2       MR. SUSHON:

3           Object to the form.

4       DEPONENT:

5           That is correct.

6       MR. PAPEZ:

7           Q       When those funds are swept out on a daily  
8       basis, where are they swept to?

9           A       To the TSA account.

10          Q       And once they are swept into the TSA accounts,  
11       do they become available for general use by the  
12       Commonwealth Central Government?

13          A       No, they are subject to the purpose for which  
14       they were created, which is the payment of pensions.  
15       They are available for the purpose for which they were  
16       created, which is the payment of pensions.

17          Q       When they're swept out of the accounts and  
18       into the TSA accounts, are they commingled with other  
19       funds that are dedicated for other purposes?

20          A       Due to their nature, they are mixed with other  
21       deposits. They are mingled with other deposits.

22       MS. DALE:

23           Matt, when you get a chance, could we take a break?

24       MR. PAPEZ:

25           Yeah, sure, let's go on break.

1 OFF THE RECORD.

2 COURT REPORTER:

3 Okay, we're back on record.

4 MR. PAPEZ:

5 Q Okay. Mr. Peña, we've handed you what was  
6 marked yesterday as Exhibit 8. Do you see this is a  
7 copy of the Joint Resolution 188?

8 MR. SUSHON:

9 This is the Spanish version of that.

10 MR. PAPEZ:

11 Q You've seen, or are familiar with, Joint  
12 Resolution 188. Correct?

13 A I have seen it before, yes.

14 Q Okay. When did the Commonwealth start  
15 drafting Joint Resolution 188?

16 MR. SUSHON:

17 Object to the form.

18 DEPONENT:

19 I understand it was during the process of preparing  
20 the budget.

21 MR. PAPEZ:

22 Q And when was that?

23 A Sometime between March and May, which is when  
24 the budget is submitted.

25 Q Was the Treasury Department at all involved in

1 drafting this?

2 A The Department of Treasury may have received  
3 it for comments, but not for preparation.

4 Q If you look at Section 4-1, it states that  
5 "The General Fund, thru the pay-as-you-go System shall  
6 assume any payments that the three Retirement Systems  
7 cannot make."

8 INTERPRETER:

9 Section...

10 MR. SUSHON:

11 Four.

12 INTERPRETER:

13 Uh-huh.

14 MR. PAPEZ:

15 Q Are the payments they're referring to there  
16 would be the same pension benefits that the three  
17 retirement systems would have owed under the existing  
18 pension systems?

19 MR. SUSHON:

20 Objection. The best evidence of what the  
21 legislation means is the claim made by the legislation.

22 DEPONENT:

23 Based on this text, that would basically be the  
24 payments that the retirement systems need to make.

25

1 MR. PAPEZ:

2 Q All right. So, just to cut through this,  
3 nothing in Joint Resolution 188 created new pension  
4 benefits for members of ERS. Correct?

5 MR. SUSHON:

6 Object to the form. The best evidence is the  
7 effect of Joint Resolution 188 is the Tax Return  
8 Resolution 188.

9 DEPONENT:

10 Just for my clarification, what do you mean by  
11 "members"?

12 MR. PAPEZ:

13 Q The retirees.

14 A Okay. Based on the text of the Resolution, I  
15 do not see any additional benefits for retirees.

16 Q Okay. So, in other words...

17 MS. GORDON:

18 Sorry. Did you clarify "beneficios" or '¿eso lo  
19 dijiste?'

20 INTERPRETER:

21 "Benefits."

22 MS. GORDON:

23 No, but did you said "benefits," or  
24 "beneficiaries"?

25

1 INTERPRETER:

2 No, no, "nuevos beneficios para los retirados."

3 MR. PAPEZ:

4 Q So, just to clarify that, the obligations that  
5 the General Fund was assuming are obligations that the  
6 Retirement Systems already had.

7 MR. SUSHON:

8 Same objection. The best evidence...

9 DEPONENT:

10 It would be the obligations of pension payments.

11 MR. PAPEZ:

12 Q Why did the Commonwealth direct that the  
13 General Fund assume those benefit payments, instead of  
14 just directing that contributions to ERS be increased?

15 MR. SUSHON:

16 I'm going to object to that on the deliberative  
17 process privilege ban, and I instruct you not to answer.

18 MR. PAPEZ:

19 Q We can refer to Joint Resolution 188, if you  
20 want, but would you agree that one of the results of the  
21 legislation was that ERS had to sell its assets, and  
22 contribute the proceeds of that to the General Fund for  
23 the payment of pensions?

24 MR. SUSHON:

25 I object under the Best Evidence Rule.

1 DEPONENT:

2 The text of Resolution 188 is clear, and speaks for  
3 itself, regarding the different Retirement Systems, and  
4 the expectations of the General Fund of the Government,  
5 the Government's General Fund receiving transfer of  
6 monies.

7 MR. PAPEZ:

8 Q My question is: Why is it that the  
9 Commonwealth directed ERS to sell its assets and  
10 transfer those funds to the General Fund, as opposed to  
11 just using them to pay pensions?

12 INTERPRETER:

13 To transfer the funds to what? TRS?

14 MR. PAPEZ:

15 No, the General Fund.

16 DEPONENT:

17 To the General Fund to pay for the benefits, as  
18 opposed to...

19 INTERPRETER:

20 The second part of your question.

21 MR. SAGARDÍA:

22 I think you are confused with the question.

23 MS. GORDON:

24 "To transfer the funds to the General Fund"

25

1 INTERPRETER:

2 "Rather than just pay the pensions directly?"

3 MR. SUSHON:

4 I object to that question on the grounds of the  
5 deliberative process privilege, and instruct you not to  
6 answer.

7 MR. PAPEZ:

8 Q All right. After Joint Resolution 188 went  
9 into effect, Public Corporations and Municipalities, and  
10 the Central Government were obligated to pay Pay-Go  
11 fees. Correct?

12 MR. SUSHON:

13 I object under the Best Evidence Rule.

14 DEPONENT:

15 I do not see that in the text, but I do see, at the  
16 end of the document, is that AAFAF would establish a  
17 mechanism to establish a system based on Pay-Go.

18 MR. PAPEZ:

19 Q Okay, put aside the text. I'm just asking you  
20 what happened. After Joint Resolution 188 went into  
21 effect, was a system set up such that municipalities  
22 started paying Pay-Go fees?

23 A That is correct.

24 Q And, similarly, Public Corporations started  
25 paying Pay-Go fees.

1 MR. SUSHON:

2 Object to the form.

3 DEPONENT:

4 Yes, that is correct.

5 MR. PAPEZ:

6 Q And, as we talked about before, the Central  
7 Government didn't actually make transfers, but made  
8 accounting entries to reflect Pay-Go fees. Correct?

9 A That is correct.

10 Q Okay. And all of those Pay-Go fees were used  
11 to fund pension payments to retirees, that existed  
12 before Joint Resolution 188 went into effect. Correct?

13 MR. SUSHON:

14 Object to the form.

15 DEPONENT:

16 Okay, all of the payments were to make payments for  
17 pensions, but I cannot specify if it was all of them,  
18 but most of them.

19 MR. PAPEZ:

20 Q Aside from where the funds were paid to, Pay-  
21 Go fees being paid to the accounts we talked about  
22 earlier, and employer contributions being paid to ERS,  
23 what is the difference between Pay-Go fees and employer  
24 contributions?

25 A Okay, the payroll payments are based on an

1 amount similar to the payment, the pension payments,  
2 whereas the contributions by the employer are based on a  
3 percentage of the annual payroll.

4 Q Is there any other difference that you can  
5 think of?

6                   A       At this time, that is the most significant  
7       one.

8 MR. PAPEZ:

9 I'm handing deponent...

10 COURT REPORTER:

11 This one is 25.

12 MR. PAPEZ:

13 Q I'm handing you Exhibit 25. There's an  
14 English and a Spanish version, and you're welcome to  
15 refer to whichever you please. It's an e-mail dated  
16 July 7, 2017 from Omar Rodríguez to several folks, and  
17 your C.C. is on it.

18 (Deponent reviews exhibit.)

19 A I can see that.

20 Q Okay. Who is Omar Rodríguez?

21                   A     He is the deputy secretary of Central  
22                   Accounting at the Department of the Treasury.

23 Q Okay. Does he report to you?

24                   A       At the time of this notification, no. As the  
25                   current under-secretary of the Treasury, yes.

1                   Q     Okay. Just briefly, do you know who the folks  
2     are that you're sending this to? And I don't need a big  
3     description, but can you tell by their names where they  
4     work?

5                   A     I can recognize all of them except Radames  
6     Garcia, as employees of the Department of the Treasury.

7                   Q     And there's no reason to disagree that you  
8     received this e-mail on or about July 7, 2017.

9     MR. SUSHON:

10                  Object to the form.

11     DEPONENT:

12                  I'm copied on the e-mail, so...

13     MR. PAPEZ:

14                  Q     So you would assume you had received it?

15                  A     I can assume that the e-mail was sent to me.

16                  Q     You have no reason to think that you didn't  
17     receive it, correct?

18     MR. SUSHON:

19                  Object to the form.

20     DEPONENT:

21                  No, I have no reason.

22     MR. PAPEZ:

23                  Q     Okay. You can see that it attaches a circular  
24     letter, No. 1300-46-17, do you see that?

25                  A     That is correct.

1 Q Okay.

2 MR. PAPEZ:

3 Can you hand him Exhibit 13?

4 And, Bill, this more a question for you, we have  
5 the version, the attachment, but it's in Spanish, the  
6 one that we reviewed yesterday, it has a different Bates  
7 number, and that's the one we had translated.

8 I'm happy to staple the attachment onto, you know,  
9 Exhibit 25, if you'd like, but I'm going to be working  
10 with Exhibit 13, which is the attachment, which is the  
11 circular letter.

12 MR. SUSHON:

13 You can work with whatever you want; it's your  
14 deposition. Exhibit 13 is not a Bates-numbered  
15 document, it's in the original Spanish version. It's  
16 also not Bates numbered. So, I have no basis, sitting  
17 here, and knowing whether Exhibit 13 is the actual  
18 attachment to Exhibit 25.

19 If you want to make that representation, and then  
20 prove it up, that's fine.

21 MR. PAPEZ:

22 Okay, why don't we just mark the Spanish version...

23 COURT REPORTER:

24 Twenty-six.

25

1 MR. PAPEZ:

2 Twenty-six. Mark that as Exhibit 26.

3 Q Okay. If you look at Exhibit 26, it's the  
4 attachment to the e-mail it's referenced in, Exhibit 25.

5 Do you see that?

6 A Yes, I see the reference.

7 Q Okay. And turn to the back page of Exhibit  
8 26, it's signed by Mr. Raúl Maldonado Gautier. Do you  
9 see that?

10 A Yes, I see it.

11 Q And that's the secretary of the Treasury at  
12 the time?

13 A That is correct.

14 Q Is he still the secretary of the Treasury?

15 A Currently, yes.

16 Q Did you read this document at the time, in  
17 June of 2017?

18 MR. SUSHON:

19 Objection.

20 DEPONENT:

21 That is correct.

22 MR. PAPEZ:

23 Q If you look on, if you look on the top of Page  
24 2 of Exhibit 26, there are various bank accounts listed  
25 there. Do you see that?

1                   A     Okay, I see on Page 2 that there are two  
2     tables with bank accounts.

3                   Q     Okay. I'm focusing on the top one. It says,  
4     in the text above, that "it is the responsibility of the  
5     entities to send the Pay-Go charge in its entirety to  
6     the Department of the Treasury to the following: Banco  
7     Popular de Puerto Rico accounts." Do you see that?

8     MR. SUSHON:

9                   Object to the form.

10    DEPONENT:

11    I see it.

12    MR. PAPEZ:

13                   Q     All right. Earlier, when we were talking  
14     about the bank accounts that were set up to receive the  
15     Pay-Go fees, are these the bank accounts that you were  
16     referring to?

17                   A     That is correct.

18                   Q     All right. If you turn to the first page of  
19     Exhibit 24, 26, I'm sorry, the last paragraph, second  
20     sentence, it refers to the "systems," meaning ERS, JRS,  
21     and TRS, "...shall determine and administer the amount  
22     of the payment per pensioner to be paid by each public  
23     corporation and municipality."

24    MR. SUSHON:

25    I'm sorry, Matt, where are you on?

1 DEPONENT:

2 I see it.

3 MR. PAPEZ:

4 Q Is that how the system, or the payroll system  
5 works, in the sense that, does ERS determine the amount  
6 of payment per pensioner to be paid by the Public  
7 Corporations and the Municipalities?

8 A To the best of my understanding, ERS invoices,  
9 and applies the payments to the platform, but the  
10 amounts are determined jointly with AAFAF.

11 Q ERS and AAFAF, jointly determine?

12 A Yes.

13 Q But you said "ERS actually sends the  
14 invoices"?

15 MR. SUSHON:

16 Object to the form.

17 DEPONENT:

18 That is correct.

19 MR. PAPEZ:

20 Q All right. You can set those documents aside.  
21 Going back to Exhibit 26, which was the circular letter,  
22 it was signed by both the Treasury secretary and the  
23 administrator of ERS. Correct?

24 A That is correct.

25 Q All right. Would you agree that it would've

1       been important for all the statements, in Exhibit 26, to  
2       be accurate?

3       MR. SUSHON:

4            Objection. Object to the form.

5       DEPONENT:

6            I don't understand what the question refers to.

7       MR. PAPEZ:

8           Q      Well, this was an official document, that was  
9       signed by two high-level governmental employees.

10      Correct?

11      MR. SUSHON:

12           Object to the form.

13      DEPONENT:

14           That is correct.

15      MR. PAPEZ:

16           Q      Okay. Do you agree, that it is important for  
17       a document like that to be accurate?

18      MR. SUSHON:

19           Object to the form.

20      DEPONENT:

21           It would be reasonable to say that it should  
22       contain the most complete information possible.

23      MR. PAPEZ:

24           Q      And it would also be reasonable to believe  
25       that there would be no misrepresentations in that

1 document. Correct?

2 MR. SUSHON:

3 Object to the form.

4 DEPONENT:

5 That is the good faith intention of any circular  
6 letter.

7 MR. PAPEZ:

8 Q Okay. You can set it aside. Okay, we'll  
9 mark that as Exhibit -- what's the next one?

10 COURT REPORTER:

11 Twenty-seven.

12 MR. PAPEZ:

13 I made them one exhibit, so we'll staple them as  
14 soon as he's finished with them.

15 MR. SUSHON:

16 Okay, so it's Exhibit 27, and there are the same,  
17 it appears they are the same Bates numbers.

18 MR. PAPEZ:

19 The English is a translation of the Spanish.

20 MR. SUSHON:

21 So the produced version is the Spanish language  
22 exhibit.

23 MR. PAPEZ:

24 Right.

25

1 DEPONENT:

2 I do not know the answer.

3 MR. PAPEZ:

4 Okay. Now you can put that aside. Now, we'll take  
5 a look at Exhibit 10. I think we...

6 COURT REPORTER:

7 Ten?

8 MR. PAPEZ:

9 Yeah. I think we showed it to him earlier.

10 COURT REPORTER:

11 Yes.

12 MR. PAPEZ:

13 Q Okay, Exhibit 10, we looked at earlier, is a  
14 copy of Act 106. Earlier we talked about Section 221.  
15 I have a couple of questions.

16 All right. I'd like to direct your attention to  
17 Section 1.4, which is Public Policy. And I'm not going  
18 to ask you to interpret the document, or anything like  
19 that, I'm just using that as a point of reference.

20 Section 1.4 declares it to be "The Public Policy of  
21 the Government of Puerto Rico, to protect the pensions  
22 of all public service retirees, who participated in the  
23 three aforementioned Retirement Systems," meaning ERS,  
24 JRS and TRS. Do you see that?

25 A Yes.

1                   Q     Was that actually the Public Policy of the  
2     Commonwealth to protect the pensions of all public  
3     service retirees who participated in ERS?

4                   A     That's the text of the law.

5                   Q     And aside from the text of the law, is that  
6     the Public Policy of the Commonwealth?

7                   A     I will interpret it as "yes," because it is  
8     part of the text of the law. That's very clear.

9                   Q     Was the Public Policy to protect pensions  
10    given a higher priority by the Commonwealth in the  
11    payment of the pension bonds?

12    MR. SUSHON:

13                  I'm going to object to that on the grounds of  
14    deliberative process privilege to the extent that there  
15    were any deliberations that have not resulted in some  
16    sort of final decision. If there's been some final  
17    decision that you're aware of, along the lines of what  
18    he has described, he can testify as to that. Please  
19    translate that if you can.

20    INTERPRETER:

21                  Okay. You're going to have to repeat that. I'm  
22    sorry.

23    MR. SUSHON:

24                  I was afraid of that. I am going to assert  
25    deliberative process privilege...

1 INTERPRETER:

2 Okay.

3 MR. SUSHON:

4 ...that have not resulted in a final decision. So  
5 you should not discuss those when answering the  
6 question. But if there have been any final decisions,  
7 that you're aware of, along the lines of what you have  
8 described, you may testify as to those.

9 DEPONENT:

10 Okay. Public Policy is what is contained in  
11 Article 1.4 of the law, of Law Number 106.

12 MR. PAPEZ:

13 Q Okay. The Pay-Go System went into effect on  
14 July 1<sup>st</sup>, 2017. Correct?

15 A We began implementing on that date.

16 Q Okay. Did the Commonwealth have an  
17 understanding, on July 1<sup>st</sup>, 2017, about whether ERS  
18 would be able to pay its interest and principal payments  
19 on the ERS bonds, pension bonds, if the Pay-Go System  
20 was implemented?

21 MR. SUSHON:

22 Object to the form. Incomplete hypothetical.

23 DEPONENT:

24 To answer your question, I believe that on a  
25 previous date there had been, a protection had been

1       instituted, based on the fact that they would probably  
2       not be able to, okay, a moratorium based on some issues,  
3       that they would probably not be able to pay.

4       MR. PAPEZ:

5           Q       "They" being ERS?

6           A       Yes, the answer to your question is, yes, ERS.

7           Q       The Commonwealth was aware, was it not, that  
8       ERS bondholders claimed the security interest on ERS's  
9       future revenues, through at least 2050.

10      INTERPRETER:

11           Okay, repeat that again for me, so I can get this  
12       order straight.

13      MR. PAPEZ:

14           Sure.

15           Q       On June 1<sup>st</sup>, 2017, was the Commonwealth aware  
16       that ERS bondholders claimed a security interest...

17      INTERPRETER:

18           Okay.

19      MR. PAPEZ:

20           Q       ...on ERS's future revenues?

21      MS. GORDON:

22           No, I'm sorry. That's an improper translation of  
23       what he said.

24      MR. PAPEZ:

25           Let me try again.

1                   Q        I want to frame my question as of June 1<sup>st</sup>,  
2        2017. On that day, did the Commonwealth know that ERS  
3        bondholders claimed a security interest on ERS's future  
4        revenues?

5                   A        In order to answer that question, I would have  
6        to confirm that with ERS, because I do not know the  
7        procedures at ERS.

8                   Q        Was the Commonwealth aware that ERS had issued  
9        pension obligation bonds in 2008?

10                  A        Based on the information in the financial  
11        statements, yes.

12                  Q        And was the Commonwealth aware that those  
13        pension obligation bonds were secured by certain assets  
14        of ERS?

15        INTERPRETER:

16                  Secured by what?

17        MR. PAPEZ:

18                  Certain assets of ERS.

19        DEPONENT:

20                  I understand that, yes.

21        MR. PAPEZ:

22                  Q        Okay. And was the Commonwealth aware that  
23        some of the ERS assets, that secured the pension  
24        obligation bonds, were future employer contributions to  
25        ERS?

1 MR. PAPEZ:

2 I'm just trying to lay some foundation. If he  
3 wants to read it, he can.

4 INTERPRETER:

5 Okay. This would Schedule A?

6 MR. PAPEZ:

7 Yes.

8 Q So I'm just going to ask you: In the  
9 Commonwealth's understanding, what was the effect of  
10 Joint Resolution 188 and Act 106, on the ERS  
11 bondholders' security interest?

12 MR. SUSHON:

13 I am going to object to the form, and Matt, as you  
14 know, we objected to these topics, and defined the  
15 subject matters on which Mr. Peña would be available to  
16 testify, so, and among our objections, I believe, I  
17 don't have them at the tips of my fingers there's an  
18 objection to define term "security interest," but if you  
19 can answer his question, you can answer his question.

20 DEPONENT:

21 I do not have information in order to answer  
22 regarding the impact of ERS's transactions.

23 MR. PAPEZ:

24 Q All right. Does the Commonwealth have  
25 testimony today about the effect of Joint Resolution 188

1 MR. SUSHON:

2 We're going through the process of objecting to  
3 your 30(b)(6) witness. And that we conferred about it.  
4 You didn't have any issues, that I can recall, with  
5 respect to the objections to these particular defined  
6 terms, so, let's proceed.

7 MR. PAPEZ:

8 Q All right, Mr. Peña, I just want to know: Do  
9 you have testimony, on behalf of the Commonwealth today,  
10 about the effect of either Joint Resolution 188, or Act  
11 106, on the pledged property?

12 A I cannot give any testimony on transactions,  
13 assets, or debts by ERS. It would have to be ERS who  
14 would have to respond to the questions on those issues.

15 MR. PAPEZ:

16 All right. That's Exhibit?

17 COURT REPORTER:

18 Twenty-eight.

19 MR. PAPEZ:

20 Exhibit 28.

21 Q I'm handing you Exhibit 28, which is a  
22 translation that we performed, or had a certified  
23 translation done.

24 I'm not going to go through this in detail, but you  
25 see it's a July 19, 2017 letter from executive director

1 of AAFAF to Mr. Collazo at ERS.

2 A Yes, I can see that.

3 Q Okay. In the second full paragraph, it talks  
4 about Joint Resolution 188, allocating \$390,480,000 from  
5 liquidation of available funds of ERS for the payment of  
6 pension benefits and that's a summary, but you're free  
7 to read the whole paragraph.

8 A Yes, I see that.

9 Q Okay. Do you know whether the actual three  
10 hundred and ninety, strike that. Let me start over.

11 Do you know whether ERS actually liquidated its  
12 assets, as referenced in the second paragraph there?

13 MR. SUSHON:

14 Object to the form.

15 DEPONENT:

16 I cannot respond in terms of the transaction that  
17 ERS carried out. I can respond in terms of the  
18 Government having received cash from ERS.

19 MR. PAPEZ:

20 Q And the cash that the Central Government  
21 received is \$190,480,000, that's referenced in the  
22 second-to-the-last paragraph of April the 28<sup>th</sup>.

23 Correct?

24 A That is correct.

25 Q Is there \$200 million, no, let me strike that

1 and start over. The difference between \$390,480,000 and  
2 \$190,400,000 is exactly \$200 million dollars. Is that  
3 \$200 million dollars still at ERS?

4 MR. SUSHON:

5 Objection to that. Also object to the foundation.

6 DEPONENT:

7 I cannot respond in reference to the assets that  
8 ERS may still have, but the Government of Puerto Rico  
9 did receive \$200 million, \$200,000 million, \$20,000  
10 million dollars from another retirement system within  
11 the Government.

12 MR. SUSHON:

13 \$200 million.

14 DEPONENT:

15 Clarification, \$200 million, from another  
16 retirement system.

17 MR. PAPEZ:

18 Q Which retirement system was that?

19 A The retirement system for teachers.

20 Q Is that \$200 million from the teachers system,  
21 plus the \$190,480,000, referenced in Exhibit 28, is the  
22 \$390,480,000 that's also referenced in Exhibit 28?

23 A That is correct. That is correct.

24 Q The \$200 million dollars from the Teachers  
25 Retirement System, was that paid over to the Central

1                   Government also in or around July of 2017?

2                   A        That is correct.

3                   Q        Is the Commonwealth aware that recently  
4                   legislation was passed, and signed by the Governor that  
5                   eliminates the obligation of Municipalities to make  
6                   Pay-Go fees?

7                   A        I am aware.

8                   Q        Is that statute now in effect such that  
9                   Municipalities, as of today, don't have to pay Pay-Go  
10                  fees?

11                  A        My understanding is that it is in effect, is  
12                  currently in effect and applicable to transactions for  
13                  the next fiscal year.

14                  Q        And so, as of today, May 30, 2019, are  
15                  Municipalities still paying their Pay-Go fees into the  
16                  account that we discussed earlier?

17                  A        Some of the Municipalities are paying.

18                  Q        All of the Municipalities will be excused from  
19                  paying Pay-Go fees into that account that we talked  
20                  about earlier.

21                  MR. SUSHON:

22                  Object to the form.

23                  DEPONENT:

24                  That is the knowledge that I have.

25

1 MR. PAPEZ:

2 Q And so as of July 1<sup>st</sup>, 2019, the only entities  
3 that will be paying Pay-Go fees in the account we  
4 discussed, are the Public Corporations.

5 MR. SUSHON:

6 We object to the form and beyond the scope of the  
7 notice.

8 DEPONENT:

9 According to the approved law, the Public  
10 Corporations will continue to pay their Pay-Go fees, and  
11 the Municipalities that previously paid Pay-Go fees will  
12 be paying those fees into the General Fund. Those fees  
13 will be covered by the General Fund.

14 MR. PAPEZ:

15 Q So, just so I understand, as of July 1, 2019,  
16 the General Fund will cover the Pay-Go fees that the  
17 Municipalities would have otherwise have been obligated  
18 to pay.

19 MR. SUSHON:

20 Object to the form and beyond the scope.

21 DEPONENT:

22 That is what I understand.

23 MR. PAPEZ:

24 Q Will those also be accounting entries similar  
25 to what the Central Government does with regard to its

1 Pay-Go fees?

2 MR. SUSHON:

3 Object to the form and beyond the scope.

4 DEPONENT:

5 We have not yet determined the accounting treatment  
6 for those transactions.

7 MR. PAPEZ:

8 Q But, as far as you understand, the money will  
9 be paid, no, strike that. All right, Mr. Peña, I've  
10 handed you Exhibit 18, which was marked yesterday.

11 It's a letter from the Oversight Board to, well, it  
12 says, "The chief financial officer of the Government of  
13 Puerto Rico, Mr. Maldonado Gautier." Do you see that?

14 A Yes, I see it.

15 Q Is Mr. Maldonado Gautier still the Treasury  
16 Secretary?

17 A That is correct.

18 Q Is there any different title between CFO and  
19 Treasury secretary that is meant to be conveyed by this,  
20 and I don't know...

21 MR. SUSHON:

22 Objection, beyond the scope.

23 DEPONENT:

24 The secretary of the Treasury is a designation  
25 under the Constitution of the Commonwealth of Puerto

1 Rico. The Chief Financial Officer is a designation  
2 under the Governor. Or designated by the Governor.

3 Q Okay. I'm not going to cover this letter in  
4 detail, but, I guess let me ask you: Is the  
5 Commonwealth aware of this letter that was sent to Mr.  
6 Gautier, Maldonado Gautier?

7 A That is correct.

8 Q And, generally, it discusses an underpayment  
9 of Pay-Go fees by certain Municipalities and Public  
10 Corporations. Is that presently?

11 MR. SUSHON:

12 Object to the form.

13 DEPONENT:

14 Basically what it does is make the Government aware  
15 of the debts incurred by Municipalities and Public  
16 Corporations, regarding the Pay-Go fees, and the  
17 individual contributions that have been withheld.

18 MR. PAPEZ:

19 Q Towards the end of the letter, on Page 3,  
20 carrying over to 4, it describes various actions that  
21 the Oversight Board would like the secretary of the  
22 Treasury, the Office of Management and Budget, and the  
23 Municipal Revenue Collection Center to start taking.

24 Do you see that?

25

1 summarized in, Exhibit 18, been collected?

2 A That is correct.

3 Q How much?

4 A Okay, in Section 4, individual employees with  
5 individual payroll withheld, as of last week, 5.5  
6 million were collected, and in the case of the  
7 corporations, I can recall a payment of approximately  
8 \$20 million by PRASA, for payroll fees.

9 Q Can you recall any other payments, by any of  
10 the other Public Corporations and Municipalities for  
11 their Pay-Go fee debt?

12 A I cannot recall them at this time.

13 MR. PAPEZ:

14 I tell you what: Let me just review my notes, and  
15 we'll take a quick break. Take a break.

16 COURT REPORTER:

17 Take a break?

18 MR. PAPEZ:

19 Yeah.

20 OFF THE RECORD.

21 COURT REPORTER:

22 Okay, we're ready.

23 MR. PAPEZ:

24 Q Okay, Mr. Peña, I have handed you what we  
25 marked as Exhibit 29, which is an e-mail from Mr. Brian

1       Bigio and Conway McKenzie, to you, and copying Rafael Di  
2       Napoli, do you see that?

3           A       Yes, I can see that.

4       MR. SUSHON:

5           I have just a quick question: The attached last  
6       two pages, that these were produced as the attachment to  
7       the e-mail?

8       MR. PAPEZ:

9           Yes.

10      MR. SUSHON:

11      Okay.

12      MR. PAPEZ:

13           So, the attachment, you'll see, as an Excel file,  
14       and so...

15      MR. SUSHON:

16           That's true.

17      MR. PAPEZ:

18           Q       If you read the e-mail, Mr. Biggio writes to  
19       you that Rafael said that you, Mr. Peña, were looking  
20       for detailed budgeted Pay-Go by agency. Do you see  
21       that?

22           A       That is correct.

23           Q       Do you recall why you were looking for that  
24       information, in September 2017?

25

1 MR. SUSHON:

2 In answering that question, to the extent that it  
3 involves any pre-decisional deliberations of the  
4 Government, you shouldn't testify as to that  
5 information. But, otherwise, you can answer.

6 DEPONENT:

7 At that time, as the treasurer, I did the forecasts  
8 for cash-flows.

9 MR. PAPEZ:

10 Q And the Pay-Go budget by agency was  
11 information that you would take into account for the  
12 cash-flow?

13 A That is correct.

14 Q Mr. Biggio sent you what he described as "a  
15 summary of employer contributions," in a June 1<sup>st</sup>  
16 version of the budget by an agency, and then if you look  
17 at the attachment, up at the top it says, "FY 18  
18 Employers Pension Contribution." Do you see that?

19 A I can see that.

20 Q Were these, the employer contributions that  
21 are in the attachment, calculated under the old pre-July  
22 1, 2017 system?

23 MR. SUSHON:

24 Object to the form, and this is beyond the scope of  
25 the topics.

1 DEPONENT:

2 I can't specify how these amounts were calculated.

3 MR. PAPEZ:

4 Q Do you recall whether, in calculating Pay-Go  
5 fees, whoever it was, whether ERS or somebody used the  
6 old employer contributions as a baseline?

7 MR. SUSHON:

8 Object to the form. Are you talking about actual  
9 Pay-Go fees, or projected Pay-Go fees?

10 MR. PAPEZ:

11 Q Let's start with actual Pay-Go fees. And just  
12 so I understand, and we'll do this in steps, what I'm  
13 trying to understand is, was there a relationship  
14 between employer contributions, before July 2017, and  
15 Pay-Go fees after July 2017, in terms of how they were  
16 calculated?

17 A I understand that there was no relation.

18 Payment for employer by payroll contributions is based  
19 on a percentage of the payroll calculated annually, and  
20 the Pay-Go fees is based, is more related to the payment  
21 of benefits to the retiree.

22 Q Okay. Getting back to the e-mail, Mr. Biggio  
23 writes, "As you are aware, in the final approved budget,  
24 the employer contributions were moved to Agency 17  
25 (under the custody of OMB)." My question is: What is

1 "Agency 17"?

2 A It is an agency code, within the accounting  
3 system, to identify transactions under the custody of  
4 the Office of Management and Budget.

5 Q So what is Mr. Biggio referring to there, when  
6 he says that, "In the final approved budget, employer  
7 contributions were moved to Agency 17"?

8 MR. SUSHON:

9 Objection, calls for speculation.

10 DEPONENT:

11 I cannot specify what Mr. Biggio was referring to  
12 at that time.

13 MR. PAPEZ:

14 Q Okay. Well, were you aware, in July of 2017  
15 that, in the final approved budget, employer  
16 contributions were moved to Agency 17?

17 A I am aware that in the final approved budget,  
18 there are appropriations for the payment of pensions  
19 that are under the custody of the Office of Management  
20 and Budget.

21 Q Mr. Peña, just a couple of quick questions on  
22 Exhibit 9. You'll see this is a MOU, a Memorandum of  
23 Understanding, that purports to be among the Government  
24 of Puerto Rico ERS and AAFAF. Do you see that?

25 If you turn to the last page, you'll see that it's

1           COURT REPORTER:

2           Thirty.

3           MR. PAPEZ:

4           Thirty?

5           Q        Okay. Mr. Peña, if you could turn to Topic,  
6        or to Page 6, in Exhibit 30, Topic Number 1 is "The  
7        value of the property subject to the ERS bondholders  
8        security interest at any time, or any analysis thereof,  
9        including, without limitation, on the following dates:  
10      May 21, 2017; June 30, 2017; August 23<sup>rd</sup>, 2017; and  
11      today." Do you see that? Am I correct that you're not  
12      prepared to offer testimony on that topic today?

13        A        That is correct.

14        Q        Okay.

15        MR. PAPEZ:

16           With that I have no more questions. I pass the  
17        witness.

18        MR. GREEN:

19           Good afternoon, I'm Jesse Green of one case on  
20        behalf of the Puerto Rico Funds.

21        MR. SUSHON:

22           That is Exhibit number what?

23        MR. PAPEZ:

24           That was Exhibit 30, so...

25